ETHICS MANUAL FOR MEMBERS AND EMPLOYEES OF THE U.S. HOUSE OF REPRESENTATIVES

PREPARED AT THE DIRECTION OF

THE COMMITTEE ON STANDARDS OF OFFICIAL CONDUCT

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INTRODUCTION

The purpose of this manual is to provide Members and employees of the House of Representatives with a reference to the major standards of conduct, rules, regulations and statutes which are applicable to Members of Congress and to activities of House staffers, and to some questions which may be encountered in engaging in those duties or activities. The manual will provide a highlighting and a brief discussion of selected ethical and conflict of interest provisions applicable to the subject matter covered, and will refer to relevant decisions and opinions in that area.

This publication is intended as an overview and a reference tool, and not as an all-inclusive compilation of ethical or conflict provisions, nor an exhaustive study of points and authorities in the areas discussed. Employees of the House are advised to note and consider any general practice or specific rules of conduct of their employing office or committee, and to seek assistance on questions of ethical conduct from appropriate supervisory personnel.

Opinions and advice on conflicts of interest and in the general area of congressional ethics may be requested by Members or employees from the House Committee on Standards of Official Conduct. Questions concerning regulations on official allowances, expenses, official employment and compensation matters specifically, for example, might be directed to the House Administration Committee or the Office of the Clerk of the House, as appropriate. Specific questions on the frankability of mail matter may be directed to, and advisory opinions on these matters sought from, the House Commission on Congressional Mailing Standards.

Inquiries relative to certain prohibited nongovernmental activities in House office buildings may be directed to the House Office Building Commission.

The manual was prepared and written by Jack Maskell, and revised with the assistance of Jay Shampansky, legislative attorneys, American Law Division of the Congressional Research Service, Library of Congress.

Members and employees are cautioned that the laws, rules, or standards of conduct upon which this manual is based, are subject to change, and notice of any such change should be taken.

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Chapter 1. GENERAL ETHICAL STANDARDS

Highlight

Members and employees of the House are instructed by ethical rules to:

—conduct themselves at all times in a manner which reflects creditably on the House;

—abide by the spirit as well as the letter of House rules, that is, generally speaking, not to attempt to do something indirectly which they are specifically barred from doing directly;

—abide by the broad ethical standards expressed in the 1958 "Code of Ethics for Government Service".

Members of the House are requested by House Rules to refrain from certain congressional activity after conviction of some crimes until the Members presumption of innocence is reinstated or until the Member is reelected to the House after conviction.

In addition to the general ethical standards noted, and the specific standards discussed later in this manual, employees of the House should be aware of and note any additional rules, regulations, standards or practices which may be in existence for the specific office for which the employee works.

Chapter 1. GENERAL ETHICAL STANDARDS

Conduct Reflecting Creditably on the House. Members and employees of the House are subject to broad ethical standards adopted in the Code of Official Conduct of the Rules of the House of Representatives. Clause 1 of that Code, House Rule XLIII, states that "A Member, officer, or employee of the House of Representatives shall conduct himself at all times in a manner which shall reflect creditably on the House of Representatives."

In interpreting clause 1 of the Code of Official Conduct recommended by the Standards of Official Conduct Committee of the 90th Congress, the Committee in its report noted that although "this standard probably would remain untested", it was included within the Code to deal with "flagrant" violations of the law which reflect on "Congress as a whole", and which might otherwise go unpunished:

> Since the Constitution quite clearly makes the House the judge of its own membership, it seems appropriate to summarize in a single standard a tentative description of conduct, by which the House through referral from this committee can treat promptly with a given act or an accumulation of acts of a Member which it determines to have reflected discredit on the Congress.
>
> It is possible that a flagrant violation of law reflecting on the Congress as a whole could go unpunished if the virtually unlimited power of law enforcement officials to prosecute were not exercised. In such circumstances, the legislative branch would find it difficult to assert the right to be the judge of its own membership.
>
> A contrary situation might well find an investigation by this committee establishing that there exists no "probable grounds" for a particular complaint. Under such conditions, this finding would have some appearance to enforcement officials as invocation of the "judge of its own membership" doctrine. While conceding that this standard probably would remain untested, the committee feels that it should be a part of a code of standards in the interest of, and as a safeguard for the whole.[1]

During the floor debates preceding the adoption of the Code of Official Conduct in the 90th Congress, Representative Price of Illinois, chairman of the then Select Committee on Standards of Official Conduct, noted that the committee under clause 1 of the Code could deal with "any given act or accumulation of acts."[2] Such statement was qualfied by the chairman, however, in his explana-

[1] House Report No. 1176, 90th Cong., 2d sess., March 14, 1968, p. 17.
[2] 114 *Congressional Record* 8778, April 3, 1968.

tion that the committee, in rejecting the notion that violations of law are simultaneous violations of the Code, has not intended to have the Code deal with violations of a minor nature or purely personal complaints, and that such "acts" with which the committee may deal under clause 1 must "be severe enough to reflect discredit on the Congress":

> The committee endeavored to draft a code that would have a deterrent effect against improper conduct and at the same time be capable of enforcement if violated. Initially the committee considered making violations of law simultaneous violations of the code, but such a direct tie-in was eventually ruled out for the reason that it might open the door to stampedes for investigation of every minor complaint or purely personal accusation made against a Member. At the same time there was a need for retaining the ability to deal with any given act or accumulation of acts which, in the judgment of the committee, are severe enough to reflect discredit on the Congress. Stated purposefully in subjective language, this standard [paragraph 1] provides both assurances.[3]

Later in the floor discussion of the Code of Official Conduct, a member of the 90th Congress Select Committee on Standards of Official Conduct, Mr. Arends of Illinois, noted that the committee did try to keep the focus of the proposed rules on official, rather than personal, conduct:

> The second fundamental to be recognized is that the Congress has the constitutional right to determine its own rules. And this right, too, has its limitations. The rules are applicable only in connection with the operation of the Congress itself. Somehow a line must be drawn as between what is personal conduct and what is official conduct.[4]

As to the practical operation of this ethical standard, it should be noted that the House Committee on Standards of Official Conduct in the 95th Congress recommended disciplinary measures to the full House concerning the conduct of three Members of the 95th Congress. The Committee found that certain conduct alleged had violated clause 1 of the Code of Official Conduct as conduct not reflecting creditably on the House as a whole. The conduct cited in the reports by the Committee as sustaining the charges of violations of clause 1 of the Code of Official Conduct dealt generally with the Korean influence investigation, and specifically referred to alleged statutory violations in some instances. Included among the alleged statutory violations cited as constituting violations of clause 1 were failure to report campaign contributions[5] and perjury.[6] As to conduct violating clause 1 where no specific statutory

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[3] *Id.*

[4] *Congressional Record* 8785, April 3, 1968.

[5] House Report No. 95–1742, 95th Cong. 2d sess., to accompany H. Res. 1415, 95th Congress, pp. 2–3 (see count 1), referring to Public Law 92–225, section 304(b)(2); House Report No. 95–1743, 95th Cong., 2d sess., to accompany H. Res. 1416, 95th Congress, pp. 2–3 (count 1), referring to Public Law 92–225, sections 302(b) and 304.

[6] H. Rpt. No. 95–1743, supra at pp. 3–4 (count 3; see also count 4 not sustained by the committee), referring to 18 U.S.C. § 1621.

violation was cited, the Committee reports charged a Member with making false writings to the Committee.[7] The Committee in an earlier Statement of Alleged Violations had cited the receipt of favors or benefits "under circumstances which may be construed by reasonable persons as influencing the performance of Governmental duties" in violation of rule 5 of the Code of Ethics for Government Service,[8] as conduct which violates clause 1 of the Code of Official Conduct of the House Rules as not reflecting creditably on the House.[9] However, the Committee found that this specific charge was not sustained by clear and convincing evidence in the case presented. The three Members of the House who were the subjects of the Committee's recommendations for disciplinary action were officially reprimanded by the House of Representatives on October 13, 1978.[10] None of the three Members subject to the disciplinary action was, at the time of the Committee and House action, under indictment for the specific conduct alleged.

In the 96th Congress this general standard at clause 1 of House Rule XLIII was again used as a basis for several disciplinary proceedings and actions against Members of the House. In the most severe action, a Member of the 96th Congress was expelled by the full House for his conviction by a jury on bribery charges.[11] As stated by the House Committee on Standards of Official Conduct in recommending the expulsion of the Member, the action was based on the finding "that he took money in return for promising to use that influence on their behalf and that he thereby acted corruptly, in violation of law, and in total disregard of his duties and obligations as spelled out in Clauses 1 through 3 of House Rule XLIII."[12] Another Member of Congress who, as noted by the Standards of Official Conduct Committee, was found guilty for "accepting a bribe in exchange for promises to perform legislative acts", was found to be in violation of Clause 1 of House Rule XLIII, among other House Rules and ethical standards.[13] The Member resigned from the 96th Congress before sanctions were recommended by the Committee.

A Member of the House was censured in the 96th Congress and was required to make restitution of monies in the amount which he had personally benefited in his admitted misuse of the congressional clerk hire allowance.[14] The House Committee on Standards of Official Conduct in recommending the censure and the restitution of funds, noted that the Member had admitted to misusing the clerk hire allowance to his own unjust enrichment in violation of a specific House Rule, and that such conduct reflected discredit on the House in violation of Clause 1 of House Rule XLIII.[15] The

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[7] House Report No. 95-1741, 95th Cong., 2d sess., to accompany H. Res. 1414, 95th Cong., pp. 4-5.

[8] 72 Stat. part II, B 12 (1958).

[9] H. Rpt. No. 95-1742, supra at pp. 3-4.

[10] See *Congressional Record*, October 13, 1978, at H 12820—H 12828; H 13249—H 13253; H 13253—13261 (daily ed.).

[11] See *Congressional Record*, October 2, 1980 H10289-10309 (daily ed.).

[12] House Report No. 96-1387, 96th Congress, 2d Session, *In the Matter of Representative Michael J. Myers*, p. 5.

[13] House Report No. 96-1537, 96th Congress, 2d Session, *In the Matter of Representative John W. Jenrette, Jr.*, pp. 10-11.

[14] See *Congressional Record*, July 31, 1979, H 6900-6906 (daily ed.)

[15] House Report No. 96-351, 96th Congress, 1st Session, *In the Matter of Representative Charles C. Diggs, Jr.*

Member had previously been convicted on Federal mail fraud and false statement charges stemming from these activities.[16]

Clause 1 of Rule XLIII was again cited in a later censure of a Member in the 96th Congress.[17] In that instance, the Standards of Official Conduct Committee found that accepting gifts from persons with interests in legislation before Congress in violation of a House Rule (See House Rule XLIII(4)) was conduct which reflected discredit upon the House in violation of Clause 1 of House Rule XLIII.[18]

A Statement of Alleged Violations was issued by the Committee on Standards of Official Conduct against a Member for twenty four counts of having "demanded or received money or other valuable consideration to influence officials of the United States Government on behalf of various private interests" and one count of perjury, which the Committee alleged violated Clause 1 of House Rule XLIII as conduct which reflected discredit upon the House.[19] Eventually, the Committee lost jurisdiction over this matter upon the resignation of the Member. Prior to the issuance of the Statement of Alleged Violation by the Committee, the Member had been tried for various counts of bribery, conspiracy and false declaration. That trial had ended in a mistrial, and a new trial was ordered and was pending at the time of the Member's resignation.[20]

In the 97th Congress, Clause 1 of House Rule XLIII was cited as a basis for a recommendation that a Member be expelled.[21] The Member had been convicted by a jury of criminal offenses, including accepting an illegal gratuity, bribery, and conspiracy, which the Committee on Standards of Official Conduct determined were acts that "constitute[d] extremely grave violations of House Rules," including Clause 1 of Rule XLIII.[22] The Member submitted his resignation after the Committee recommended his expulsion, and thus no further action was taken by the House.[23]

Clause 1 also provided the basis for the recommendation of the Committee on Standards of Official Conduct in the 98th Congress that two Members be reprimanded.[24] Both Members were found to have engaged in sexual relationships with pages employed by the House.[25] Because of the special responsibility the House has in relation to its pages, similar to that of *in loco parentis,* it was determined that "a sexual relationship between a Member of the House and a teenage House page, even if consensual, constitutes a breach of the official obligations of a Member of the House," and a viola-

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[16] See report in *Washington Post,* October 8, 1978, p. A1, *United States* v. *Diggs,* No. 78-142, (D.D.C.).

[17] See *Congressional Record,* June 10, 1980, H 4691-4708 (daily ed.).

[18] House Report No. 96-930, 96th Congress, 2d Session, *In the Matter of Representative Charles H. Wilson,* p. 5.

[19] House Report No. 96-856, 96th Congress, 2d Session, *In the Matter of Representative Daniel J. Flood,* pp. 4-16, 125-126.

[20] The former Member eventually pleaded guilty to lesser charges of conspiracy to solicit illegal campaign contributions in exchange for dismissal of the felony counts, see report in *Washington Post,* February 27, 1980, p. A8.

[21] House Report No. 97-110, 97th Congress, 1st Session, *In The Matter of Representative Raymond F. Lederer,* p. 16.

[22] Id. at 5, 16.

[23] Id. at 17.

[24] House Report No. 98-295, 98th Congress, 1st Session, *In The Matter of Representative Gerry E. Studds;* House Report No. 98-296, 98th Congress, 1st Session, *In The Matter of Representative Daniel B. Crane.*

[25] H. Rpt. No. 98-295, supra; H. Rpt. No. 98-296, supra.

tion of Clause 1 of Rule XLIII.[26] The House voted to censure both Members, rather than to reprimand them, as recommended by the Committee.[27]

The Spirit and Letter of House Rules. Clause 2 of the Code of Official Conduct, House Rule XLIII, provides that "A Member, officer, or employee of the House of Representatives shall adhere to the spirit and the letter of the Rules of the House of Representatives and to the rules of duly constituted committees thereof."

The original purpose of this provision, as noted in the report of the Committee on Standards of Official Conduct of the 90th Congress in recommending its adoption, was apparently aimed at dealing with questions of decorum and legislative practices:

> It is also unlikely that the above standard will ever have to meet the tests of enforcement. Its purpose in the code is to restate and reemphasize the importance of the precedents of decorum and consideration that have evolved in the House over the years. These precedents are more than mere politeness; they are the essence of the order of the House.
>
> The Committee heard recommendations that it draw standards to reduce the number of time-consuming quorum calls, govern attendance on the floor and in committee meetings, and deal with seemingly unfair and dilatory legislative tactics. Such proposals were considered, but proposed drafts illustrated the greater impracticality of this approach in comparison with a more general admonition to observe the spirit of existing and adequate rules and practices.[28]

In the debates preceding the adoption of this provision, however, it was apparently contemplated that this rule might provide an actionable standard for congressional discipline. As summarized by Representative Price, the Chairman of the Committee on Standards of Official Conduct of the 90th Congress:

> This standard was drafted also in general terms rather than attempting to deal more specifically with such things as unfair and dilatory legislative tactics. It did not appear practicable to the committee to attempt to regulate these areas more closely. This standard should provide the House the means to deal with infractions that rise to trouble it without burdening it with defining specific charges that would be difficult to state with precision.[29]

The practical effect of clause 2 of the Code of Official Conduct has apparently been to provide a device for interpretation and construction of other provisions of the Code of Official Conduct and the House Rules. Generally, it has been suggested that this Rule should be interpreted to mean that a Member or employee may not

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[26] House Report No. 98-297, 98th Congress, 1st Session, *Report of the Committee on Standards of Official Conduct on the Inquiry Under House Resolution 12, 98th Congress.*

[27] *Congressional Record*, July 20, 1983, H5280-H5295.

[28] House Report No. 1176, 90th Congress, 2d Session, March 14, 1968, p. 17.

[29] 114 *Congressional Record* 8778, April 3, 1968, see also comments by Mr. Teague of Texas, member of the Standards of Official Conduct Committee of the 90th Congress, 114 Cong. Rec. 8799.

do indirectly what the Member or employee would be barred from doing directly. The Select Committee on Ethics of the 95th Congress cited this provision to show that a narrow technical reading of a House Rule should not overcome the "spirit" of the rule and the intent of the House in adopting the particular rule.[30] The Select Committee thus looked into the legislative history of a Rule to find the legislative purpose and intent in determining the "spirit" of a House Rule.[31] Stated simply, this provision apparently means that the House Rules should be construed and applied broadly. In addition to the use of clause 2 as an aid to interpreting other House Rules, it should be noted that this clause was cited by the House Committee on Standards of Official Conduct as one of the violations of House Rules for which a Member was expelled in the 96th Congress.[32] The clause was again cited by the Committee in the 97th Congress in recommending a Member's expulsion.[33]

Refraining from Congressional Activity After Conviction. On April 16, 1975, the House adopted an amendment to the Code of Official Conduct pertaining to a Member of Congress who has been convicted of a crime. That provision, now clause 10 of House Rule XLIII, the Code of Official Conduct, provides that a Member of the House who pleads guilty to or is convicted of a crime for which the sentence could be two or more years imprisonment should refrain from committee business and from voting in the House until judicial or executive proceedings reinstate the Member's presumption of innocence, or until he is reelected to the House after his conviction.

The report on this measure from the Standards of Official Conduct Committee noted that the Committee will not, as a rule, take action on a complaint of a statutory violation by a Member where such conduct is known to, and is being acted upon by, the appropriate authorities. However, in the case of allegations of abuses of official authority or position to which no statute specifically applies, or in the case of alleged statutory violations where no "expeditious" action from law enforcement authorities is apparent, the committee will "concern itself forthwith", and not necessarily defer action on the matter:

> To the question of when to act, the committee adopted a policy which essentially is: where an allegation is that one has abused his direct representational or legislative position—or his "official conduct" has been questioned—the committee concerns itself forthwith, because there is no other immediate avenue of remedy. But where an allegation involves a possible violation of statutory law, and the committee is assured that the charges are known to and are being expeditiously acted upon by the appropriate authorities, the policy has been to defer action until the judicial proceedings have run their course. This is not to say the committee abandons concern in statutory matters—

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[30] See Advisory Opinion No. 4, April 6, 1977, of the Select Committee on Ethics, U.S. House of Representatives, 95th Congress.

[31] See Advisory Opinion No. 6, May 9, 1977, of the Select Committee on Ethics, 95th Congress, p. 3.

[32] House Report No. 96-1387, supra at p. 5.

[33] House Report No. 97-110, supra.

> rather it feels it normally should not undertake duplicative investigations pending judicial resolution of such cases.[34]

The Committee report noted that this new provision would amend this procedure and practice to some degree. That is, even if the judicial process has not entirely run its course, such as when appeals are pending, the legislative branch will take cognizance of certain guilty pleas or verdicts against a Member in the manner expressed in the Rule until the Member's presumption of innocence is reinstated or until the Member is reelected to the House subsequent to his conviction:

> The implementation of this policy has shown, through experience, only one need for revision. For the House to withhold any action whatever until ultimate disposition of a judicial proceeding could mean, in effect, the barring of any legislative branch action, since the appeals processes often do, or can be made to, extend over a period longer than the two-year term of the Member.
>
> Since Members of Congress are not subject to recall and in the absence of any other means of dealing with such cases short of reprimand, or censure, or expulsion (which would be totally inappropriate until final judicial resolution of the case), public opinion could well interpret inaction as indifference on the part of the House.
>
> The committee recognizes a very distinguishable link in the chain of due process—that is, the point at which the defendant no longer has claim to the presumption of innocence. This point is reached in a criminal prosecution upon a plea of guilty or upon conviction by a jury or by a judge (or judges) if jury trial is waived. It is to this condition, and only to this condition, that the proposed resolution is directed.[35]

It is apparent from the proceedings in the 96th Congress and the 97th Congress, however, that the House Committee on Standards of Official Conduct, and the full House, may choose to initiate disciplinary proceedings and to take disciplinary action against a Member for conduct even when that Member has not exhausted all of his appeals in the criminal process. This was the case in four disciplinary proceedings against Members of the House in the 96th Congress and one in the 97th Congress.[36]

Code of Ethics for Government Service. Broad ethical guidelines for "all Government employees, including officeholders" are expressed in the "Code of Ethics for Government Service" adopted by the 85th Congress in 1958.[37] The specific guidelines and conduct standards are expressed as follows:

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[34] House Report No. 94-76, 94th Congress, 1st Session, p. 2.
[35] *Id.*
[36] H. Rpt. No. 96-351, supra; H. Rpt. No. 96-856, supra; H. Rpt. No. 96-1387, supra; H. Rpt. No. 96-1537, supra; H. Rpt. No. 97-110, supra.
[37] 72 Stat. part II, B 12.

CODE OF ETHICS FOR GOVERNMENT SERVICE

Resolved by the House of Representatives (the Senate concurring), That it is the sense of the Congress that the following Code of Ethics should be adhered to by all Government employees, including officeholders:

CODE OF ETHICS FOR GOVERNMENT SERVICE

Any person in Government should:

1. Put loyalty to the highest moral principles and to country above loyalty to persons, party, or Government department.
2. Uphold the Constitution, laws, and legal regulations of the United States and of all governments therein and never be a party to their evasion.
3. Give a full day's labor for a full day's pay; giving to the performance of his duties his earnest effort and best thought.
4. Seek to find and employ more efficient and economical ways of getting tasks accomplished.
5. Never discriminate unfairly by the dispensing of special favors or privileges to anyone, whether for remuneration or not; and never accept, for himself or his family, favors or benefits under circumstances which might be construed by reasonable persons as influencing the performance of his governmental duties.
6. Make no private promises of any kind binding upon the duties of office, since a Government employee has no private word which can be binding on public duty.
7. Engage in no business with the Government, either directly or indirectly, which is inconsistent with the conscientious performance of his governmental duties.
8. Never use any information coming to him confidentially in the performance of governmental duties as a means for making private profit.
9. Expose corruption wherever discovered.
10. Uphold these principles, ever conscious that public office is a public trust.

Passed July 11, 1958.

The Code of Ethics was adopted as a concurrent resolution [38] expressing the "sense of Congress", and thus in itself did not have any legally binding effect. Generally, a concurrent resolution expires at the end of the Congress which adopted it and does not continue to have force and effect beyond that Congress.[39] However, the ethical considerations expressed in this Code have been found to remain as established standards of conduct by which Members, and apparently employees of the House should abide. With respect to the applicability of the Code to the conduct of present Members of the House, the House Committee on Standards of Official Con-

[38] H. Con. Res. 175, 85th Congress.
[39] Riddick, "The United States Congress, Organization and Procedure," 1949, p. 21; "Deschler's Procedure," 1974, ch. 17 § 4.4; "Hinds' Precedents of the House of Representatives," Vol. V, sec. 7053, p. 1023–para. 1.

duct has concluded that even if the resolution may have technically expired at the end of the 85th Congress, the ethical precepts expressed in it "represent continuing traditional standards of ethical conduct to be observed by Members at all times * * *."[40]

As to the practical applicability and enforcement of these provisions as actionable standards for congressional discipline, the Committee on Standards of Official Conduct has noted that they are of a broad general nature "not delineated with any great exactitude", and thus would require an evaluation of the circumstances of a particular matter on a case-by-case basis to determine legitimate charges of unethical conduct:

> The Committee is cognizant of the fact that these traditional standards of conduct as expressed in the Code of Ethics for Government Service, and as revealed in House precedents, are not delineated with any great exactitude and may therefore prove difficult in enforcement. The Committee is likewise aware that because of the generality of these standards their violation is easily alleged, and that this may be subject to some abuse. However, the Committee believes it was for the very purpose of evaluating particular situations against existing standards, and of weeding out baseless charges from legitimate ones, that this committee was created.[41]

The ethical standards of this Code of Ethics have, in fact, provided the basis for official charges against Members of the House. In one instance charges concerning the use of a Member's official position for pecuniary gain and the receipt of benefits under circumstances which may be construed as influencing one's official duties were heard before the Standards of Official Conduct Committee, resulting eventually in an official reprimand of the Member by the full House of Representatives.[42] In other instances these standards of the Code provided the basis for charges against Members of the House in disciplinary proceedings which were eventually dropped as not having been sustained by the evidence presented,[43] or which were terminated upon the resignation of the Member involved.[44]

Rules of Supervisors, Committees, Members and Officers. Although not compiled in this material, it is important for staff employees of the House of Representatives to check any additional rules, regulations or practices which may be in existence for the specific office or unit for which the employee works. Employing Members or committees may have established rules and practices for their employees which are additional to the restrictions and rules generally applicable to employees of the House.

Violations of Ethical Standards. There are various penalties or consequences which may arise for a violation of an ethical standard depending, in the first instance, on the source of the standard of conduct. Thus, violations of standards expressed in a criminal

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[40] House Report No. 94-1364, 94th Congress, 2d Session, July 23, 1976, p. 3, 7-8.
[41] *Id.* at p. 8
[42] H. Rpt. No. 94-1364 supra.
[43] H. Rpt. No. 95-1742, supra, pp, 3-4; H. Rpt. No. 96-930, supra.
[44] H. Rpt. No. 96-856, supra; H. Rpt. No. 96-1537, supra; H. Rpt. No. 97-110, supra.

statute may incur a specific fine or imprisonment, or both. Such penalty is generally provided within the specific language of the statutory provision, or, as in the case of campaign law violations, in a penalties section applicable to violations of provisions of a certain chapter of the Code. In some instances, such as in conversion or use of Government funds or property to one's own use, or other misappropriations or false claims concerning expenses or allowances, an action might be instituted against a violator for recovery of the funds misappropriated.

Even where no specific penalties are provided, such as in the House Code of Official Conduct or the Code of Ethics for Government Service, for example, an employee of the House could be removed from his position in the House for such misconduct by an employing Member at his discretion,[45] by the employing committee by majority vote,[46] or by an officer of Congress having responsibility for supervision of an employee.[47]

The House Committee on Standards of Official Conduct is specifically authorized by the House Rules to recommend to the House "administrative actions" deemed appropriate to enforce standards of conduct for both Members and employees of the House; to investigate alleged violations of any law, rule or regulation pertaining to official conduct of an employee or Member and to recommend to the House action as the Committee deems appropriate; and may report, with the approval of the House, apparent violations of law uncovered in investigations to the appropriate law enforcement authorities.[48] Each House of Congress is specifically authorized under the Constitution to "punish its Members for disorderly Behaviour, and, with the concurrence of two thirds, expel a Member." [49] Under the authority to punish a Member for disorderly behavior, precedents have shown that the House, in addition to expelling a Member, may punish a Member by censure, reprimand, fine, condemnation, suspension or by demanding an apology from such Member because of misconduct.[50]

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[45] U.S.C. § 92.
[46] See House Rule XI, cl. 6(a)(4) and 6(b)(3).
[47] 2 U.S.C. § 60–1; see also 2 U.S.C. § 90.
[48] House Rule X(e).
[49] United States Constitution, Art. I, Section 5, cl. 2.
[50] "House of Representatives Exclusion, Censure, and Expulsion Cases from 1789 to 1973," committee print, Joint Committee on Congressional Operations, 93d Congress, 1st Session; See H. Rpt. No. 94-1364, Committee on Standards of Official Conduct, 94th Congress, 2d Session.

Chapter 2. OFFICIAL EMPLOYMENT AND COMPENSATION OF STAFF

Highlight

An officer, employee, or Member of Congress may not:
—hire, promote, or recommend for promotion a relative;
—discriminate on the basis of race, color, religion, sex, or national origin in hiring, pay or working conditions;
—prevent someone, or threaten to prevent someone, from getting a Federal job or benefit in order to obtain a political contribution or to coerce political activity.

An employee of the House may not be required to:
—divide or share his salary;
—"kickback" a portion of his salary to a Member or an aide;
—spend personal money to benefit the Member or the operations of a Member's office;
—agree to apply part of his salary in the future to some indebtedness or obligation of the Member.

A Member or an employee of the House should note that:
—there are no formal job descriptions for those on the clerk hire rolls of a Member and for those on committee staffs;
—A House employee is paid from United States Treasury funds for the regular performance of official duties which are commensurate with the compensation received;
—employees are not compensated to perform non-official, personal, or campaign duties on behalf of the Member or anyone else;
—once employees fulfill the official duties which they are required to perform, they may generally engage in non-official, personal or campaign activities on their free time.

Chapter 2. OFFICIAL EMPLOYMENT AND COMPENSATION OF STAFF

The subject of employment, compensation, and utilization of staff employees of the Congress has in recent years become an area of increased concern in the field of congressional ethics.[1] Several Members and congressional aides have become involved in prosecutions, suits and allegations concerning such problems as nepotism, discrimination in hiring, salary "kickbacks", and the "padding" of congressional payrolls with persons who do not perform any congressional duties.

It has been noted that although Congress has enacted numerous laws to deal with certain employment and compensation issues and problems of employee-employer relations in the private sector (and in some instances in the Federal sector) such as the provisions of the Fair Labor Standards Act, the Occupational Safety and Health Act, the National Labor Relations Act, and the Age Discrimination Act, the Congress itself does not, as of this date, generally come within the coverage of such legislation.[2] Specific statutes, regulations, and rules, however, have been adopted relating to some potential problems in the area of employment and compensation in the House, such as the ones discussed in this manual covering restrictions on nepotism and discrimination in hiring and compensation, regulations on minimum and maximum rates of pay for clerk hire individuals, protection against employees being required to share or divide their salary with another and the protection of employees from "kickback" schemes or salary assessments.

In the area of utilization of congressional staff, one of the important factors is that for most employees of the House, that is, those on the clerk hire rolls of a Member and those on the staff of a committee, there are no formal job descriptions or uniform work standards. Such matters relating to the general terms, conditions and the specific duties of employment have traditionally been within the discretion of the Member of the employing committee.

As to the duties required of staff employees in general, however, it should be noted that the basic standard for compensation of employees of the House is that the employee has regularly performed official duties reflecting the compensation he receives.[3] Thus, al-

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[1] See: Washington Post, July 1, 1976, p. D 3; January 25, 1976, p. A2; October 10, 1973, p. A1; September 19, 1973, p. D 17; see series of five articles appearing on February 16, 1975, to February 20, 1975, pp. A1; also February 7, 1975, p. D 19; New York Times, February 16, 1975, p. 41; October 3, 1976, p. 42.

[2] See: 29 U.S.C. §§ 201-219, 203(e)(2)(A)(iii); 29 U.S.C. §§ 641-678; 652(5); 29 U.S.C. §§ 151-166, 152(2); 29 U.S.C. §§ 621-634, 630(b) and 633a; see also title 7 of the Civil Rights Act of 1964 (Equal Employment Opportunity Act) 42 U.S.C. § 2000e et seq., at § 2000e(b) and 2000e-16(a).

[3] Regulations of the House Administration Committee; "Regulations and Accounting Procedures for Allowances and Expenses of Committees, Members and Employees of the U.S. House of Representatives", December, 1980, parts II(C)(2)(a) and III(B)(2)(a); Order of the Committee on House Administration, adopted October 21, 1981, para. 6; see also, House Rule XLIII(8); see Code of Ethics for Government Service, 72 Stat. part 2, p. B12, para. 3.

though there are no formal job descriptions apparent under House Rule or statute for those on the clerk-hire rolls of a Member or for committee staff, employees of the House are paid from funds from the United States Treasury to perform public duties, that is to assist a Member in his official responsibilities [4] or to work on official committee business.[5] Such employees are therefore not compensated from public funds to perform non-official, personal, or campaign duties on behalf of the Member.[6]

General Employment and Compensation Provisions. Regulations governing the Member's clerk hire allowance and the employment of committee staff have been promulgated by the House Administration Committee. These regulations, entitled "Regulations and Accounting Procedures for Allowances and Expenses of Committees, Members, and Employees of the U.S. House of Representatives," should be referred to for requirements and regulations in this area. Some of the provisions of those regulations are briefly discussed in this section below.

The clerk-hire allowance of a Member of the House is available for the employment of up to 18 permanent clerks for the Member's staff. The regulations issued by the House Administration Committee establish the total amount of allowance for clerk-hire, the maximum monthly payout from that allowance, and fix the maximum and minimum annual rates of employee's salaries.[7] The regulations of the House Administration Committee note the requirement that compensation from the clerk-hire allowance is available only for services performed in Washington, D.C., or in the state or district which the Member represents, and also provide guidelines for minimum length of employment, reemployment rules, and provisions regarding leave.[8]

The rules concerning the appointment of committee staff are generally set out in the Rules of the House of Representatives at Rule XI, clause 6. These provisions establish the number of professional and clerical staff which may be employed by the standing committees of the House,[9] and set a limit on rates of pay for such employees.[10] Regulations and guidelines for employment and compensation of committee staff are also set out in the House Administration regulations at Part II, C.

The regulations of the House Administration Committee provide for the certification of an employee's salary for official duties on a monthly basis. These regulations state that salaries will be disbursed to employees only upon a monthly certification by the appropriate Member, committee and subcommittee chairman or officer of the House "as to the amount of said salary, the physical location of each employee, the regular performance of official duties,

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[4] See, for example, Legislative Appropriations Act of 1984, P.L. 98–51, 97 Stat. 268.
[5] House Rule XI, cl. 6(a)(3) and (b).
[6] See *United States* v. *Diggs*, 613 F.2d 988, 995–997, 1002, (1979), *cert. den.* 446 U.S. 982 (1980).
[7] House Administration Committee Regulations, supra at part III(B)(1) (a), (b), and (c). An order of the Committee on House Administration specifies that the staff of certified legislative service organizations (i.e., caucuses, committees, and similar groups operated solely to provide legislative services or other assistance to Members in the performance of their official duties) may be paid from the clerk-hire allowance. Order adopted October 21, 1981, introductory para.
[8] *Id.*, parts III(B)(1) (e), (f), (g), and III(B)(7). See also U.S. House of Representatives Edition, Congressional Handbook (December 1980) at pp. 86–91.
[9] House Rule XI, cl. 6, see also cl. 5.
[10] See House Rule XI, cl. 6(c), see also House Administration Regulations, supra at part II(C).

and the relationship of each employee to any current Member of Congress." [11] It would appear then that compensation may only be received for official duties performed by the employee within the preceding month, and thus advance payment to an employee would be contrary to these regulations.[12]

Under provisions of Federal statutory law employees of the House may not be required, and are not allowed, to share a House position with another or to divide their House salary with another person.[13] Further, House employees are required to perform their own duties for which they are compensated, as they are specifically prohibited under Federal law from subletting, or being required to sublet to another any portion of their official duties.[14]

Nepotism. Provisions of Federal law generally prohibit a Federal official from hiring or promoting one of his relatives. The statute, at 5 U.S.C. § 3110, prohibits a Federal official, including a Member of Congress, from appointing, promoting, or recommending for appointment or promotion any "relative" of the official to any agency or department over which the official exercises authority or control. The statute specifically lists those relations of a public official which come within the provision as a "relative" of the official:

> "relative" means, with respect to a public official, an individual who is related to the public official as father, mother, son, daughter, brother, sister, uncle, aunt, first cousin, nephew, niece, husband, wife, father-in-law, mother-in-law, son-in-law, daughter-in-law, brother-in-law, sister-in-law, stepfather, stepmother, stepson, stepdaughter, stepbrother, stepsister, half brother or half sister.

It should be noted that certification as to an employee's relationship to a Member of Congress must be made on payroll authorizations by the employing Member, or committee and subcommittee chairman. The antinepotism law as applied in the House would thus prohibit the employment of a relative of a Member on that Member's staff or on the staff of a committee or a subcommittee of which the Member is chairman.

The antinepotism statute was upheld by a lower Federal court against the challenge that the provision is unconstitutionaly overbroad by finding that the statute is limited in its applicability to only "specified kinship relationships." [15] The statute would therefore not cover "relatives" who are not specifically listed in the statute as those within the prohibited class. Thus, for example, under common legal usage, and as construed by the Civil Service Commission in interpreting this provision, although the "niece" and "nephew" of an official, that is the children of the official's brothers or sisters, are within the prohibition, the niece or nephew of an official's spouse (the children of the brother or sister of an official's spouse) would apparently not be included in the prohibited class.[16]

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[11] See note 3, infra.
[12] Id.
[13] 2 U.S.C. § 86.
[14] 2 U.S.C. §§ 87 and 101.
[15] *Lee* v. *Blount*, 345 F. Supp. 585, 588 (1952).
[16] *Black's Law Dictionary*, 4th Ed., 1968; *Ballentine's Law Dictionary*, 3rd., Ed., 1969; Federal Personnel Manual, United States Civil Service Commission, ch. 310, subch. 1, Sec. 102(c).

Discrimination. The Rules of the House of Representatives, at Rule XLIII(9), specifically forbid a Member or an employee of the House to discharge or refuse to hire any individual, "or otherwise discriminate against an individual with respect to compensation, terms, conditions, or privileges of employment, because of such individual's race, color, religion, sex, or national origin." House Rules on the hiring of staff members of the standing committees of the House, Rule XI, cl. 6(a)(3), also provide that professional staffers shall be appointed "without regard to race, creed, sex, or age, and solely on the basis of fitness to perform the duties of their respective positions", and that the clerical staff of the committee shall likewise be appointed "without regard to race, creed, sex, or age." [17] In addition to House Rules against discrimination, it should be noted that a Member of Congress may be subject to suit and liability concerning discriminatory employment practices in violation of the equal protection component of the Fifth Amendment of the United States Constitution.[18]

Bribes, Political Activities or Contributions for Jobs. Criminal statutes within the United States Code prohibit a range of activities concerning the use of Federal jobs for inducing political activities, bribes, contributions or the receipt of anything of value. Specifically, federal law prohibits the receipt of something of value in return for promising support or use of influence in obtaining someone a federal post, at 18 U.S.C. § 211. As to political activities, section 599 of title 18, United States Code, prohibits candidates from promising appointment or use of influence or support in obtaining someone "any public or private position or employment" in return for political support, while section 600 of title 18 prohibits anyone from promising a Federal job or benefit to a person as consideration or a reward for political support or opposition to any candidate or party. It is also prohibited under 18 U.S.C. § 601 to deprive or threaten to deprive any Federal job or benefit as a way to induce political contributions for a candidate or a party.

Salary Kickbacks. Salary "kickback" schemes may involve a process whereby a staff employee will remit or "kickback" a portion of his salary to the employing Member or to an influential aide, or apply a portion of his salary for goods or services for the Member's benefit, agreed to by the staffer under coercion as a condition for employment. Other schemes which may be called "kickbacks" may involve the designation of certain persons as employees on the congressional payroll by the Member or an aide. Such persons designated perform no congressional duties and then turn their salary checks over to, or their checks are delivered directly to, the Member or aide involved in the scheme.

There is no statutory provision under Federal law which expressly describes and is exclusively aimed at the specific conduct involved in the various "kickback" schemes. Although there is no specific "antikickback" statute as such, several Members of Congress and congressional aides involved in such "kickback" schemes have been indicted and prosecuted under a general fraud statute of

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[17] House Rule XI, cl. 6(b)(1).

[18] *Davis* v. *Passman*, 442 U.S. 228 (1979). See also *Hanson* v. *Hoffman*, 628 F.2d 42 (D.C. Cir. 1980).

Federal law at 18 U.S.C. § 1001.[19] This criminal statute is intended to prevent false statements to the Government which further a fraudulent scheme. The statute specifically prohibits the making of any false, fictitious or fraudulent statements, or knowingly covering up or concealing by any trick or scheme a material fact, concerning matters in the jurisdiction of any Federal department or agency. The Supreme Court has found that making false or fraudulent statements or falsifying or concealing a material fact on payroll vouchers or certifications to a disbursing officer in the House of Representatives to further a "kickback" scheme was that type of false statement or entry "in any matter within the jurisdiction of any Department or agency of the United States" within the prohibition of the statute.[20]

Thus, the United States Court of Appeals for the District of Columbia, in upholding the conviction of a Member of the House under 18 U.S.C. § 1001, held that a Member's failure to disclose to the House payroll office the real purpose of pay to employees in a "kickback" scheme where such funds were applied to personal and official expenses of the Member, was a material omission in violation of the provision:

> In this case, the defendant was accused of falsifying the payroll authorization forms submitted to the House of Representatives Office of Finance for his employees. . . . In seeking payroll increases for these employees, [the Congressman] failed to disclose to the Office of Finance the *real purpose* for which the monies were intended—the defrayal of his personal and congressional expenses. Had the defendant revealed these intentions, it reasonably could be expected that the Office of Finance would not have honored the payroll requests or at least would have referred the matter to the appropriate House committee for advice. We hold, therefore, that the defendant's omissions were material.[21]

In addition to convictions under the false statements and Federal fraud provision, a violation of the Federal mail fraud statute may occur when the mails are used to distribute the payroll checks or other funds in furtherance of the "kickback" scheme.[22]

As to a scheme whereby the salaries of congressional employees are applied for the benefit of a Member or a Member's office, the Committee on Standards of Official Conduct has noted in an advisory opinion the following:

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[19] See, for example, reports of indictments and/or convictions appearing in the press concerning Representative Bramblett, *Washington Post*, Feb. 4, 1954, p. 17 and *New York Times*, Feb. 10, 1954, p. 1: Representative J. Parnell Thomas, *Washington Post*, November 11, 1948, pp. 1 & 9; *New York Times*, December 6, 1948, p. 1; Representative J. Irving Whalley, *Washington Post*, August 1, 1973, p. C1; George A. Haag, aide to Representative Collins of Texas, *Washington Post*, June 14, 1975, p. A3; Representative James Hastings, *Washington Post*, Dec. 18, 1976, and *New York Times*, Dec. 17, 1976; Representative Charles Diggs, see *Washington Post*, October 8, 1978, p. A1; indictment of Michael McPherson, aide to Representative William Clay, see *Wall Street Journal*, Sept. 22, 1976, and *Washington Post*, Sept. 22, 1976, p. A2.

[20] *United States* v. *Bramblett*, 348 U.S. 503 (1955).

[21] *United States* v. *Diggs*, supra at 999.

[22] *United States* v. *Diggs*, supra at 997-999, 1002-1003; *United States* v. *Frank M. Clark*, Criminal No. 78-207 (D.C. W.Pa. 1978).

> * * * [I]t is improper to levy, as a condition of employment, any responsibility on any clerk to incur personal expenditures for the primary benefit of the Member or of the Member's congressional office operations, such as subscriptions to publications, or purchase of services, goods or products intended for other than the clerk's own personal use.
>
> The opinion clearly would prohibit any Member from retaining any person from his clerk-hire allowance under either an express or tacit agreement that the salary to be paid him is in lieu of any present or future indebtedness of the Member, any portion of which may be allocable to goods, products, printing costs, campaign obligations, or any other nonrepresentational service.[23]

Performance of Official Duties. There are generally no uniform job descriptions or specific work standards appearing in the House Rules or regulations which are applicable to the duties of those on the clerk hire rolls of a Member or for committee staff. Some House employees, generally those under the employ of an officer of the House, will be subject to the House Employees Position Classification Act (2 U.S.C. § 291 et seq.) and the regulations on applicable employment standards issued by the House Administration Committee. However, in any case, regulations issued by the House Administration Committee provide as a general standard of compensation that the salary of a House employee will only be disbursed by the Clerk of the House upon a monthly certification by each Member, committee and subcommittee chairman, or officer, as to the "regular performance of official duties" by such employee.[24]

Furthermore, the provisions of the legislative appropriations for clerk hire allowance provide that such allowance is for securing staff to provide assistance to Members in the discharge of official and representational duties.[25] In addition to the provisions applicable to clerk hire, the House Rules state that professional staff members of the standing committees of the House are to engage only in work of "committee business; and shall not be assigned any duties other than those pertaining to committee business."[26] The House Rules further provide that the clerical staff of the House standing committees shall work on "matters related to committee work."[27]

A general ethical standard recognized by the House instructs all employees to: "Give a full day's labor for a full day's pay; giving to the performance of his duties his earnest effort and best thought."[28] Finally, the Rules of the House specifically provide that a Member "shall retain no one from his clerk hire allowance who does not perfrom duties commensurate with the compensation he receives."[29]

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[23] House Committee on Standards of Official Conduct, Advisory Opinion No. 2, July 11, 1973; see H. Rpt. No. 96–351, 96th Congress, 1st session.
[24] See note 3, infra.
[25] See note 4, infra.
[26] House Rule XI, cl. 6(a)(3).
[27] House Rule XI, cl. 6(b)(1).
[28] Code of Ethics for Government Service, 72 Stat. part 2, B 12, para. 3.
[29] House Rule XLIII(8).

Thus, the underlying standard for the receipt of compensation by an employee of the House under these provisions is that the employee has regulary performed official duties which are commensurate with the compensation he receives. Employees of the House are therefore paid from funds from the United States Treasury to perform public duties, that is, to assist a Member in his official legislative and representational duties, to work on committee business, or to perform other official congressional duties,[30] and are thus not compensated from public funds to perform non-official, personal or campaign activities on behalf of the Member or anyone else.

It should be noted that as a general appropriations principle, a Federal statute provides that appropriated funds, unless otherwise provided by law, are to be used solely for the purposes for which they were appropriated (31 U.S.C. §1301(a)). Thus, funds appropriated for congressional staff to perform "official" duties should not be used to compensate such staff for the performance of activities or duties related to non-official business.[31]

Under these appropriations principles, the general theory of misuse of appropriated funds, and fraud, various legal actions have been initiated against Federal office holders. Some civil suits have been filed by private individuals against Members of Congress under the provisions of the False Claims Act for claiming Federal salaries for staff employees who were allegedly providing non-official personal services for the Member in return for their compensation from public funds.[32] These cases by private individuals have generally proved unsuccessful on procedural grounds, when the Justice Department has not pursued the matter on behalf of the Government.[33]

Furthermore, one suit by a private individual who alleged that a Member of the Senate authorized payment of the Federal salary of his administrative assistant during a period when the aide worked exclusively on the Senator's reelection campaign was dismissed on the ground that the case presented a non-justiciable political question.[34] Citing an absence of pertinent statutes, case law, or administrative rulings, the court concluded that there are no " 'judicially discoverable and manageable standards for resolving' the question whether Senators may use [officially] paid staff members in their campaign activities."[35]

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[30] See 2 U.S.C. §85.

[31] In *United States ex rel. Joseph* v. *Cannon*, 642 F.2d 1373, 1380 (D.C. Cir. 1981), *cert. den.* 455 U.S. 999 (1982), the court indicated that 31 U.S.C. § 628 (subsequently recodified as 31 U.S.C. § 1301(a)) and provisions of the legislative branch appropriations acts may require appropriated funds to be used to compensate staffers for official duties, but held that whether campaign work is official activity is a non-justiciable political question.

[32] See *United States ex rel. Thompson* v. *Hays*, Civ. Nos. 76-1078, 76-1132, 76-1140 (D.D.C. Oct. 26, 1977).

[33] But see *United States ex rel. Hollander* v. *Clay*, 420 F. Supp 853 (D.D.C.) pertaining to use of Federal funds when Justice Department entered suit.

[34] *United States ex rel. Joseph* v. *Cannon*, 642 F.2d 1373 (D.C. Cir. 1981), *cert. den.* 455 U.S. 999 (1982).

[35] *United States ex rel. Joseph* v. *Cannon*, supra, 642 F.2d at 1379. (The internal quotation is from *Baker* v. *Carr*, 369 U.S. 186, 217 (1962).) Another count in the case, which alleged that other members of the Senator's staff performed personal services for him and his family while receiving their congressional salaries, was dismissed for vagueness, plaintiff not having cited any particular instances in which personal tasks were performed in return for federal salaries. 642 F.2d at 1385–86.

Criminal indictments were obtained by the Justice Department in two separate matters against a then current and a former Member of the House for allegedly placing persons on their respective congressional payrolls who did not regularly perform official congressional duties, but rather performed personal services or duties for or on behalf of the Member.[36] The indictments in these cases included charges of fraud, mail fraud, and perjury. A conviction was handed down by a jury on all counts of the indictment in one instance and was upheld through appeal,[37] while the former Member pleaded guilty to charges in the other case.[38]

The United States Court of Appeals upholding the fraud conviction of the Member of Congress noted that although the employees involved may have performed some official services for the Member, "only a nominal percentage of [the employees'] responsibilities were congressionally related", and thus there was sufficient evidence for a jury to conclude that such employees were paid from clerk hire allowances "with the intention of compensating them for services rendered to the [defendant Member's private business concern] or the defendant."[39] Thus, although it might be argued that "it was a matter of [the Member's] discretion to fix their duties and salaries as congressional employees", the "defendant's representations to the House Office of Finance that the [employees] were *bona fide* congressional employees were fraudulent and material, in violation of 18 U.S.C. § 1001."[40] A civil case initiated by the Justice Department as a follow-up to its criminal prosecution was dismissed on the Government's motion because the Member's financial situation would have made it impossible to execute any judgment.[41]

The various provisions discussed above, which work to require House employees to regularly perform official congressional duties commensurate with the public compensation they receive, are apparently not to be interpreted as imposing regulations of unreasonable rigidity in relation to activities of congressional staff. Thus, a "rule of reason" should generally apply to questions of personal activities, occasional favors, or errands performed by the staff which may be ordinary or typical in an office situation or in an employee-employer relationship.

Additionally, as discussed in the section on campaign activities of House employees, the House Committee on Standards of Official Conduct has stated with respect to the performance of official duties by those on the clerk hire rolls:

> . . . [D]ue to the irregular time frame in which the Congress operates, it is unrealistic to impose conventional work hours and rules on congressional employees. At some times these employees may work more than double the usual work week—at others, some less. These employees

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[36] *United States* v. *Diggs*, Criminal No. 78-142 (D.D.C.); *United States* v. *Clark*, supra.

[37] See note 6.

[38] See report in *Washington Star*, February 14, 1979, p. A4; *Congressional Quarterly Weekly Report*, June 23, 1979, p. 1263.

[39] 613 F.2d at 1002.

[40] Id.

[41] *United States* v. *Diggs*, Civ. No. 79-2148 (D.D.C. dismissed without prejudice Aug. 4, 1980). The Member resigned from the House while the civil action was pending.

> are expected to fulfill the clerical work the Member requires during the hours he requires and generally are free at other periods.[42]

Thus, in summary, for House employees on the clerk hire rolls of a Member and for committee staff there are no formal job descriptions in statutes, rules or regulations comparable to those under civil service law. The specific duties of a Member's staff or a committee staff have traditionally been within the discretion of the employing Member or committee to best meet the specific needs and requirements of that Member and his constituents or the employing committee. The apparent restraints from appropriations provisions and rules for all House employees are that appropriated funds are to be used to secure persons to perform official congressional duties commensurate with the compensation they receive. Committee staff are employed to perform duties related to committee work. As for staff employees of a Member, such persons are to be retained to assist the Member in the discharge of his "official and representational duties." As noted by a United States Court of Appeals summarizing the testimony of a House officer, it is "within a congressman's discretion to define the parameters of an employee's responsibilities as long as those responsibilities related to the congressman's 'official and representative duties'".[43]

There is no conclusive listing of what a Member's "official and representational duties" entail. However, the Supreme Court discussed such concept in a different context and noted that "legitimate" activities of a Member include things said or done in the House relating to official duties, and include "legitimate 'errands' performed for constituents, the making of appointments with Government agencies, assistance in securing Government contracts, preparing so-called 'newsletters' to constituents, news releases, and speeches delivered outside Congress." [44] The opinion of the Standards of Official Conduct Committee provides that an employee must complete those "official" duties which the Member requires him to perform, and for which he is compensated from public funds. As long as the employee completes such duties, he is generally free to engage in personal, campaign, or other non-official activities on behalf of the Member or on behalf of someone else. Although the United States Court of Appeals for the District of Columbia Circuit, in a suit filed under the False Claims Act, declined to determine whether campaign work is official activity,[45] the opinion was based on the absence of judicially manageable standards for resolving the question. That case apparently should not be construed as judicial approval of the use of appropriated funds to compensate congressional staff for campaign activity.

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[42] See note 23, infra.
[43] 613 F.2d at 997.
[44] *United States* v. *Brewster*, 408 U.S. 501, 512 (1972).
[45] *United States ex rel. Joseph* v. *Cannon*, notes 34–35 and accompanying text, supra.

Chapter 3. OFFICIAL ALLOWANCES

Highlight

Members and their staff should note that:

—allowances made available to an office are for defraying the "official expenses" of operating a congressional office;

—official allowances received for a congressional office may not be converted for one's own personal use;

—in misusing official allowances employees or Members might be involved in conduct which constitutes making "false claims" against the Government in violation of Federal law;

—only official allowances and appropriated funds may be used to defray official office expenses in the House of Representatives.

For required certifications, documentations, and regulations on the use and accounting for allowances and expenses, Members and their staff should consult the regulations of the House Administration Committee entitled "Regulations and Accounting Procedures for Allowances and Expenses of Committees, Members and Employees of the U.S. House of Representatives".

The prohibition on unofficial office accounts bars the use of private funds from outside sources to defray official office expenses in the House of Representatives.

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Chapter 3. OFFICIAL ALLOWANCES

Various allowances are authorized for Members of Congress to defray the official expenses incurred in holding congressional office. Many of the statutory authorizations for an allowance will specifically note that such allowance or reimbursement is for expenses of an "official" or "strictly official" nature.[1] Even when such specific limitation in an original statutory authorization is not present, the regulations of the House Administration Committee note that the general allowance authorized for a Member's office use has been appropriated for "official expenses" and for the "conduct of the official and representational duties of the office." [2]

The major legal and ethical problems which arise concerning official allowances, and the ones with which this report generally deals, relate to the use of these allowances for other than "official expenses," including the conversion of money or property to one's own personal use. Related problems may concern what has been called "double billing," that is, attempts to receive reimbursement more than once for the same expense, or may concern the claiming of reimbursements for non-existent expenses.

Allowance for Official Expenses. The general allowance for a Member for the "conduct of the official and representational duties" of his office, as stated in the regulations of the House Administration Committee, is to be used for certain specified expenses of a congressional office and for "other official expenses." "Other official expenses," as defined in the regulations of the House Administration Committee, are "ordinary and necessary business expenses incurred in support of the official and representational duties of the Member unless such expense has been specifically prohibited elsewhere in these regulations." [3]

The regulations of the House Administration Committee pertaining to the "allowance for official expenses" provide examples of those items of expenses for which this allowance may be used, and list examples of those items for which the official expense allowance may not be used. Included in the permissible uses are expenses for: travel, office equipment lease, district office lease, stationery, telecommunications, mass mailings, postage, computer services, and other official expenses.

Listed as items excluded from those payable from the official expenses allowance are:

(1) Expenses relating to the hiring and employment of individuals, including, but not limited to, employment service fees,

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[1] See, for example, 2 U.S.C. §§ 42c, 43b, 46g, 46g–1, 56, and 122a.

[2] Regulations and Accounting Procedures for Allowances and Expenses of Committees, Members and Employees of the U.S. House of Representatives, December 1980, Committee on House Administration, part III(A)(1).

[3] Regulations and Accounting Procedures, supra at part III(A), "Provisions Relating to Other Official Expenses".

transportation of interviewees to and from employment interviews and cost of relocation upon acceptance or termination of employment or as a result of reassignment of duty station.

(2) Items purchased from other than the House stationery store which have a useful life in excess of the current term of the Member, and which have a residual value of more than $25 upon the expiration of the current term of the Member.

(3) Holiday greeting cards, flowers, and trophies.

(4) Personal advertisements (other than meeting or appearance notices).

(5) Donations or gifts of any type, except flags of the United States flown over the Capitol and items purchased for use as gifts when on official travel for the House of Representatives outside the United States, its territories or possessions.

(6) Dues or assessments other than to legislative support organizations approved by the Committee on House Administration.

(7) Educational expenses for courses of study, information and training programs, unless the benefit accrues primarily to the House and the skill or knowledge is not commonly available.

(8) Purchases of radio and television time.

(9) Parking for Member and employees at district offices, except when included as an integral part of the lease or occupancy agreement.[4]

The allowance for official expenses may be used to pay dues or assessments to a legislative service organization (i.e., a caucus, committee, or similar group operated solely to provide legislative services or other assistance to Members in the performance of their official duties).[5] However, a legislative service organization "which receives contributions or any form of income, either direct or in-kind, from any source other than the Members . . . shall not be located in space under control of the House and shall receive no other support from the House or from Members of the House via their allowances." [6] The Committee on House Administration certifies legislative service organizations which satisfy the criteria established by the committee [7] and publishes a list of organizations that have been certified.

False Claims, Fraud. As an initial statutory consideration, concerning the use of official funds generally, Federal law provides that funds appropriated by the Federal Government are to be used, unless otherwise provided by law, only for the purposes for which appropriated.[8] When funds are used other than for their intended

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[4] Id. at part III(A)(3)(d), as amended by House Administration Committee "dear colleague" letter, January 6, 1983.

[5] Order of the Committee on House Administration, adopted October 21, 1981, introductory para.

[6] Id., para. 4. Although Members may not use their official allowances to support legislative service organizations that are privately funded, this restriction does not apply to a caucus or similar group which (a) takes advantage of educational intern, fellowship or volunteer programs that are primarily of educational benefit to the participants or (b) distributes to Members research materials prepared by persons not employed by the legislative service organization if the source of the materials is disclosed. Id., paras. 3, 8.

[7] Id., para. 2.

[8] 31 U.S.C. § 1301(a).

purposes, the misused funds may arguably be recoverable by the Government for repayment to the United States Treasury.

The use of official allowances for other than official purposes, including double billing and claims for nonexistent expenses, might involve conduct which could subject a Member or an aide to civil litigation under the False Claims Act.[9] Such a suit may be brought in the name of the United States by an individual citizen, with the potential for the Department of Justice taking over the prosecution under the provisions of the Act when false, fraudulent, or fictitious claims are allegedly made against the Government.[10]

Citizen suits under the False Claims Act, it should be noted, are often unsuccessful on procedural grounds, since the suit will be dismissed if it is shown that the evidence upon which the suit was based was in the possession of the United States prior to the initiation of the suit.[11] Many of the law suits against Members of Congress for false claims, particularly those charging the Member with use of official staff for personal purposes, were apparently based on information from newspaper reports or other press revelations and have, therefore, been dismissed on these grounds.[12] One suit, which alleged that a Senator authorized payment of the congressional salary of his administrative assistant while the aide worked on the Member's reelection campaign, was dismissed on the ground that it presented a non-justiciable political question, since there are no judicially discoverable standards for determining whether Senators may use congressional staff in their campaigns.[13]

However, in one case,[14] the Department of Justice took over prosecution from the private plaintiff. In that case the Justice Department charged the Member of Congress with false claims and unjust enrichment at the expense of the United States for allegedly submitting vouchers and receiving payments for trips which were not taken, and for allegedly claiming reimbursements for one particular mode of transportation, when another was actually used, which entitled the Member to less reimbursement than claimed. The Government and the Member of Congress settled the suit on October 27, 1976, at a compromise figure to be repayed by the Member, and the case was dismissed on October 29, 1976. The Government has also initiated suits against Members subsequent to their criminal prosecution for the same or related conduct. One such suit was dismissed at the Justice Department's motion because the former Member's financial situation would have made it impossible to execute any judgment.[15] In another action, the Government contended that a former Member used, and permitted his

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[9] 31 U.S.C. § 3729.

[10] 31 U.S.C. § 3730.

[11] Id.

[12] See *United States ex rel. Thompson* v. *Hays*, Civil Actions No. 76-1078, 1132, and 1140, dismissed by the court; *United States ex rel. Martin-Trigona* v. *Daley*, Civil Action No. 76-1164 (D.D.C.), dismissed.

[13] *United States ex rel. Joseph* v. *Cannon*, 642 F.2d 1373, 1380 (D.C. Cir. 1981), *cert. den.* 455 U.S. 999 (1982).

[14] *United States ex rel. Hollander* v. *Clay*, Civil Action No. 76-493 (D.D.C.), see 420 F. Supp. 853 (1976); see also Committee Print of the House Select Committee on Congressional Operations and the Senate Committee on Rules and Administration, 94th Congress, 2d Session, "Identifying Court Proceedings and Actions of Vital Interest to Congress", final report, pp. 90-94.

[15] *United States* v. *Diggs*, Civ. No. 79-2148 (D.D.C., dismissed without prejudice August 4, 1980).

family and friends to use, his official telephone credit card to charge personal calls.[16]

The regulations which have been promulgated by the House Administration Committee on allowances for official expenses specifically provide that the "allowance will be disbursed, upon proper certification and documentation, for the official expenses of the Member, the Member's employees or the Member's congressional office." [17] The regulations note that such documentation "shall include invoices, receipts or other evidences of expenses incurred." [18] When such documentation and certification by voucher of "official" expenses is required, the use of money received, or the supplies or services secured by such allowances, for other than the official expenses certified, may involve a fraud against the Government. The general fraud statute, 18 U.C. §1001, prohibits the making of any false, fictitious, or fraudulent statements, or using false writings, documents, or entries, concerning any matter within the jurisdiction of an agency or department of the United States. As noted in the preceding section, the Supreme Court has found that this section applies to false statements, writings or representations made to a disbursing officer of the House of Representatives in the furtherance of a fraudulent scheme.[19] Such a scheme might possibly involve, for example, the use of an allowance or funds "for purposes other than those intended by the appropriation and duly certified by the congressman." [20]

It should also be noted that criminal provisions of the United States Code prohibit the making of false or fictitious claims upon the United States,[21] and prohibit a conspiracy to defraud the Government or an agency by obtaining or aiding in obtaining the payment of false claims.[22] Criminal liability in some fact situations may potentially be present if an officer or employee knowingly steals or "converts to his use or the use of another * * * any money, or thing of value of the United States", under the provisions of a Federal criminal statute at 18 U.S.C. §641.

Recommended Accounting Procedure. As to the accounting for allowances and expenses, and general management of official funds, it should be noted that the regulations of the House Administration Committee set out an accounting procedure "designed to provide Members with a standard and uniform method for tracking authorized allowances and related expenses." [23] Reference should be made to the regulations for instructions, illustrations and procedures of the accounting method suggested. Additionally, reference should be made to the regulations for information on the permissible transferability of allowances among various accounts and categories of expenses.

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[16] *United States* v. *Eilberg*, Civ. No. 79-1623 (E.D. Pa., filed May 7, 1979) and Civ. No. 81-1693 (D.D.C., filed May 11, 1981).

[17] House Administration Regulations, supra at part III(A)(3)(a).

[18] Id. at part III(A)(3)(b).

[19] *United States* v. *Bramblett*, 348 U.S. 503 (1955); see also *United States ex rel. Hollander* v. *Clay*, 420 F. Supp. 853 (1976).

[20] *United States* v. *Diggs*, 613 F.2d 988, (D.C. Cir. 1979), *cert. den.* 446 U.S. 982 (1980).

[21] 18 U.S.C. §287.

[22] 18 U.S.C. §286, see also 18 U.S.C. §371.

[23] House Administration Regulations and Accounting Procedures, supra at part III(D).

Unofficial Office Accounts. The Rules of the House of Representatives, Rule XLV, now prohibit unofficial office accounts, commonly referred to in the past as "slush funds". Thus, outside private contributions, funds, campaign contributions, or in-kind contributions of goods or services, may not be used to support the activities of, or pay the expenses of, a congressional office. Rather, only appropriated funds and official allowances may be used for that purpose.

The intent of the rule against unofficial office accounts was, as explained by the House Commission on Administrative Review of the 95th Congress, to build a wall between private funds and official allowances. The recommendations of the House Commission on Administrative Review, which were substantially adopted on March 2, 1977, as revisions to the House Rules on conduct (H. Res. 287, 95th Congress), set forth reasons for requiring that official expenses of a Member be paid exclusively from official, appropriated funds:

> The Commission strongly believes that private funds should be used only for politically related purposes. Official allowances should reflect the necessary cost of official expenses. Increasing official allowances . . . to eliminate reliance on private sources represents a small cost to the public for the benefits to be derived. To suggest otherwise would be to accept or condone the continuation of the present system which, at the very least, allows for the appearance of impropriety, and, at worst, creates a climate for potential "influence peddling" through private financing of the official expenses of Members of Congress.[24]

Thus, private funds, such as campaign contributions, may be used only for political campaign purposes and not for official uses. No specific definition of "political campaign purposes" for which private funds may be used is provided in the rules or the legislative history of the provision; and what would be considered a bona fide campaign expense as opposed to an "official" expense would depend on the particularized facts of a specific situation.[25] For example, as noted in the discussion on the floor of the House during the adoption of the rule on unofficial office accounts and the rule restricting the use of campaign funds (see House Rule XLIII(6)), a Member's travel to his home district might be considered a political expense for which private campaign funds may be used if the purpose of the trip were politically related,[26] and that taking certain individuals out to dinner, if such were a political meeting rather than one relating to official duties, could be reimbursed or paid from campaign accounts.[27]

In Advisory Opinion No. 6, issued September 14, 1982, the Committee on Standards of Official Conduct noted that in the absence of any definition in Rule XLV or Rule XLIII(6) (relating to use of

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[24] House Document No. 95–73, 95th Congress, 1st Session, "Financial Ethics", Communications from the Chairman, House Commission on Administrative Review, February 14, 1977, p. 18.

[25] See *Congressional Record*, March 2, 1977, p. H1581 (daily ed.), comments by Mr. Frenzel.

[26] *Cong. Rec.*, supra at 1581.

[27] *Cong. Rec.*, supra at 1589.

of campaign funds) of "political" or "official" expenses, a Member is free to use his own judgment in designating a particular expenditure as political or official. "However, [the] committee is of the view that once the Member makes his determination, he is bound by it. A single event cannot, for purposes of the House rules, be treated as *both* political and official." [28] Therefore, in the situation which prompted the issuance of the advisory opinion, the Member was free to designate a town meeting in his district and in areas newly added to the district by reapportionment as either a political (campaign) event or as an official (representative) one. But by sending announcements of the town meeting under the frank (which can only be used in the conduct of official business), the Member defined the event as an official one, and thus could not use campaign funds or any other private funds to conduct, promote, or advertise the event without violating Rule XLV or Rule XLIII(6).[29] The committee noted, however, that no violation would occur if an individual or organization, such as a radio or television station, without the Member's consent, expended funds to promote the previously announced town meeting.[30]

The legislative history of the unofficial office account prohibition reveals that the injunction against a Member maintaining or having maintained an unofficial account for his use goes as well to accounts maintained for a Member's benefit, even if such is not maintained for a Member's direct use; and extends also to "a process whereby funds are received or expended" as well as to the maintenance of an actual account or repository.[31]

In an interpretation of the unofficial office account prohibition, the 95th Congress Select Committee on Ethics in the House, in an Advisory Opinion, found that the private in-kind contribution of goods or services for official purposes is prohibited under Rule XLV in a similar manner as is the private contribution of funds for official purposes.[32] The Select Committee found, however, that services from governmental agencies, the occasional use of a private meeting room to meet with constituents, and certain intern programs for a Member's office when the Member or his staff is not involved in any of the financial arrangements of the program, would not violate Rule XLV as prohibited in-kind contributions of services or facilities from private sources for a Member's official use. The Select Committee's Advisory Opinion No. 6, of May 9, 1977, summarized its findings as follows:

> For purposes of House Rule XLV, the private contribution of in-kind services for official purposes is prohibited. However, Rule XLV does not apply to service provided by federal, state and local government agencies or to the occasional use of privately-owned meeting space where no public accommodations are reasonably available for meeting with constituents. Nor does Rule XLV apply to interns or volunteers in a Member's office, based on the understanding that such intern programs are primarily of edu-

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[28] Emphasis in the original.
[29] Committee on Standards of Official Conduct, Advisory Opinion No. 6, September 14, 1982.
[30] Id.
[31] *Cong. Rec.*, supra at 1621.
[32] House Select Committee on Ethics, Advisory Opinion No. 6, May 9, 1977.

> cational benefit to the intern and do not give undue advantage to special interest groups. However, Members and their staffs may not personally raise, receive or disburse any private contributions for intern programs associated with their offices.

In addition, the final report of the Select Committee notes that Rule XLV "is not intended in any way to restrict the Member's use of his personal funds." Thus, for example, a Member may establish a petty cash fund out of his personal monies to pay for miscellaneous office expenses.[33]

The House Rules also specifically prohibit sending under the frank of a Member any mass mailings, such as newsletters or postal patron mail, which are not paid for exclusively from official funds (House Rule XLVI(4)). Thus, private funds may not be used to prepare, print, or distribute any material for a mass mailing (500 or more substantially identical pieces of mail) under the franking privilege of a Member of the House.

The rationale behind the restriction on the use of campaign funds, or other private funds, for defraying the cost of mass mailings under the frank was explained by the House Commission on Administrative Review:

> The Commission believes that since the franking privilege is reserved for "official materials," it is inappropriate for franked mass mailings to be printed and prepared with private or political funds.
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> The Commission believes that it is necessary to make a clear separation between the public purpose and private interest in the use of the frank, and, therefore, private funds should not be used to print "official documents." [34]

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[33] House Report 95–1837, 95th Congress, 2nd session, Final Report of the Select Committee on Ethics, p. 25.

[34] House Document No. 95–73, supra at 19.

Chapter 4. COMMUNICATIONS TO ADMINISTRATIVE AGENCIES ON BEHALF OF CONSTITUENTS, INCLUDING REFERRALS AND RECOMMENDATIONS FOR FEDERAL EMPLOYMENT

Highlight

Assisting constituents in their dealings with administrative agencies is generally considered a typical and useful function of a congressional office.

However, in communicating to a Federal agency on behalf of a constituent, a Member and his staff may not:

—make prohibited off-the-record contacts to an agency considering a matter under a formal proceeding;

—receive money or things of value (other than one's salary) in return for helping someone.

It should be noted that ethical standards instruct Members and employees that:

—communications to agencies on behalf of constituents may properly be made:

requesting information or status reports, urging prompt consideration of a matter, arranging for interviews or appointments, expressing judgments on a matter (subject to ex parte communications rules), asking for reconsideration based on law or regulation;

—Members and employees may not make fraudulent representations to agencies of the Government;

—Members and employees should not place undue or improper pressure upon administrators, such as by suggestions or threats of favoritism or reprisals. Such conduct has been characterized as an "unwarranted abuse of the representative role".

Staff employees of a Member may not represent someone before the Government in a private capacity, that is, other than in the performance of official congressional duties.

In recommending someone for Federal employment, it should be noted that:

—there are no specific restrictions applicable to Members and staff making recommendations and referrals for general employment in the civil service;

—however, selection in the civil service is intended to be on merit, and an appointing officer in the Government may only consider a recommendation based on the character and residence of the applicant;

—recommendations for the postal service may only be made on the basis of character or residence of the applicant.

Chapter 4. COMMUNICATIONS TO ADMINISTRATIVE AGENCIES ON BEHALF OF CONSTITUENTS, INCLUDING REFERRALS AND RECOMMENDATIONS FOR FEDERAL EMPLOYMENT

It is often suggested that one important aspect of a Congressman's representative function is to act as a go-between or conduit between his constituents and the bureaucracies of the administrative agencies of the Federal Government. One survey in the early 1970's concerning congressional office work found that 24.7 percent of staff time and 27.6 percent of a House Member's time are devoted to "constituency service."[1]

The House Committee on Standards of Official Conduct has noted that "It is our duty, directly or through our staffs, to assist constituents with their problems before the agencies of the Federal Government."[2] Such activity, in the opinion expressed by the late Senator Paul H. Douglas, serves a useful function in our governmental process by helping "legislation" and "administration" perform their respective jobs adequately through the interest of one in the work of the other.[3] In a committee print entitled "Ethics in Government", a subcommittee headed by Senator Douglas stated that legislators performing casework functions can "legitimately serve as an informal board of inspectors" of administrators; "can prevent the administrators from flagging in their zeal, and can detect and check abuses in the conduct of public business."[4] Douglas concluded in his own study of ethics in Government that there is "a sound ethical basis for legislators to represent the interests of constituents and other citizens in their dealings with administrative officials and bodies."[5]

Even though the casework function may be an important congressional duty, it is not left totally unrestricted under Federal law. Although no statutory provision flatly prohibits all such activity, Federal law does work to specifically prohibit certain communications on the merits of a matter, known as ex parte communications, from a congressional office to an executive or independent agency when a matter is being adjudicated or is in a formal proceeding within the agency.[6] As that statute prohibits off the record arguments on the merits by any person in any formal decisionmaking situation, the expression of a judgment on the merits would seem best put in writing, with the express request that it be made

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[1] Survey by John S. Saloma, reprinted in Congressional Quarterly "Guide to the Congress of the United States." Congressional Quarterly Service, Washington, 1971, p. 532.

[2] Letter from House Committee on Standards of Official Conduct, March 14, 1974.

[3] Douglas, Paul H., "Ethics in Government," Cambridge 1952, p. 87.

[4] "Ethical Standards in Government," Committee Print, Subcommittee of the Committee on Labor and Public Welfare, United States Senate, 82d Congress, 1st Session, p. 28.

[5] Douglas, supra at p. 87.

[6] 5 U.S.C. § 557(d).

a part of the record available to all interested parties and to the public.

Members of Congress and their staff also are specifically prohibited by law from receiving compensation for any services rendered someone before a Federal department, bureau or agency.[7] Additionally, congressional staffers may not represent persons in a private capacity before the Government or in court concerning a matter affecting the United States, but may engage in such representational activities only in connection with performing and fulfilling official congressional duties.[8] In addition to specific statutory proscriptions, ethical standards and guidelines exist concerning the permissible scope of such activities to prevent abuses of office and to prevent undue or improper influence or pressure upon administrative officials and the administrative process.

Compensation. Federal criminal law, 18 U.S.C. § 203, prohibits a Member of Congress and any officer or employee of the Government from asking for or receiving compensation for "services rendered" in relation to any matter or proceeding in which the United States is a party or has an interest, before any Government agency, department, or bureau. Thus, no funds or things of value, other than one's official salary, may be received by a Member or his staff for interceding or for other dealings with an administrative agency on behalf of a constituent. Caution should be exercised in this regard to avoid the appearance that solicitations of campaign contributions or the receipt of gifts or entertainment from constituents are connected in any way, as a quid pro quo, with a legislator's intervention in the administrative process on behalf of the constituent. A discussion of this problem and suggestions was offered by Senator Douglas in his book "Ethics in Government":

> It is probably not wrong for the campaign managers of a legislator before an election to request contributions from those for whom the legislator has done appreciable favors, but this should never be presented as a payment for the services rendered. Moreover, the possibility of such a contribution should never be suggested by the legislator or his staff at the time the favor is done. Furthermore, a decent interval of time should be allowed to lapse so that neither party will feel that there is a close connection between the two acts. Finally, not the slightest pressure should be put upon the recipients of the favors in regard to the campaign. It should be clearly understood that any gift they make is voluntary and there will be no question of reprisals or lack of future help by the legislator if the gift is withheld. In other words, any contribution should be not a quid pro quo but rather a wholly voluntary offering based upon personal friendship and a belief in the effectiveness of the legislator sharpened perhaps by individual experience.[9]

Under the forerunner of section 203, a Federal court in the case of *May* v. *United States,* 175 F. 2d 994 (1949), held that even though

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[7] 18 U.S.C. § 203.
[8] 18 U.S.C. § 205.
[9] Douglas, supra at 89–90.

the acts of the defendant Congressman in personally contacting a Federal agency on behalf of a constituent and bringing "his official prestige and influence to bear upon those officers" may have been lawful activity and within the "scope of his official duties as a Congressman", the gist of the offense was the receipt of compensation for such action. The court noted that "it is immaterial that those acts were patriotic, legitimate, and within the scope of his official duties as a Congressman", holding that a "Congressman cannot legally receive compensation from a private person for doing his duty in respect to something in which that person and the United States have interest." [10]

In the case of *United States* v. *Johnson,* 419 F.2d 56 (4th Cir. 1969), a Court of Appeals upheld the conviction of a Congressman for receiving compensation in connection with his attempt to have the Justice Department dismiss a mail fraud indictment against the officers of a savings and loan association. The court there noted, however, that "Congress did not intend to punish a Congressman for receiving a gift, contribution, or remuneration for a service not prohibited by the statute." [11] As to a service by a Member, which might not come within the prohibition, a Federal District Court in the case of *United States* v. *Quinn,* 141 F. Supp. 622 (D.N.Y. 1956) held that mere inquiries by a Member of Congress concerning the status of a matter pending before a Federal bureau, without discussion of the merits of the case, did not constitute prohibited "services rendered" within the statutory framework.

It should be noted that a Member of Congress who is found in violation of 18 U.S.C. section 203, for taking compensation for services rendered before Federal agencies, may be liable for repayment of the amount of compensation unlawfully received under a theory of breach of fiduciary duty and trust by the Member. In the case of *United States* v. *Podell,* 436 F. Supp. 1039 (1977), aff'd 572 F. 2d 31 (1978), the court granted a summary judgment for the United States against a former Member of Congress in the amount which the former Member had earlier pleaded guilty to receiving for his assistance rendered, while a Member of Congress, to an airline company before Federal agencies concerning the company's request for approval to operate a certain air route. The district court in the *Podell* case found that a violation of section 203 "unquestionably demonstrates a breach of trust, for in order to fall within its prohibition, a Member of Congress must shed the duty of disinterested advocacy owed the government and his constituents in favor of championing private interests potentially inconsistent with this charge." [12]

Private Representational Activities by Staff. A statutory provision under Federal law, 18 U.S.C. § 205, prohibits legislative employees (but not Members of Congress) from representing private parties, even if not for compensation, before the Federal agencies or a court in matters affecting the United States unless in the discharge of official governmental duties. Thus, § 205 generally pro-

[10] 175 F.2d 994, at 999, 1006.
[11] 419 F.2d 56, 60.
[12] 436 F. Supp. 1039, 1042; see also *United States* v. *Eilberg,* 507 F. Supp. 267 (1980).

hibits congressional staff employees from acting as agent or attorney for someone before a Federal agency or in court in matters affecting the United States unless the activity is in the proper discharge of the staffer's official congressional duties, that is, in assisting a Member in his official legislative and representational duties.[13]

The issue of representation under § 205 has arisen in relation to the filing of a law suit against the United States and specified officers by a legislative aide to a Representative on behalf of the Member and certain constituents. The suit concerned the alleged illegality of the impoundment of certain funds designated for use within the Congressman's district. According to a report in the press, the congressional aide was warned by an Assistant Attorney General of the United States that he was "under investigation for possible violation of a law against government officials bringing claims against the government",[14] that is, 18 U.S.C. § 205. Seeking clarification of the issue, the Congressman requested an opinion from the House Committee on Standards of Official Conduct. In response to this request the Committee issued an advisory letter which dealt generally with the representative responsibility of a Member of the House to his constituents, and which was specifically of the opinion that the activities of the legislative aide were "in the proper discharge of his official duties" since such were under the direction of the Member to assist him in guaranteeing representation of his constituents. The letter stated specifically:

> Research into the legislative history of 18 U.S.C. § 205 indicates to us that the statute prohibited private representational activity. Since you directed [your legislative assistant] to file suit for yourself as a Congressman and to guarantee representation of your constituents, it is clear that [the legislative assistant] was not acting in a private manner. He was acting in a manner to assist you in representing your district. This is no different than your staff acting as agents for your constituents to assist them in obtaining other vested benefits. We regard this as entirely proper.[15]

Prohibited Ex Parte Communications. The "Government in the Sunshine Act" [16] enacted in 1976 contains a provision which prohibits in certain circumstances "ex parte communications" with administrative agencies. Ex parte communications are oral or written communications made without proper notice to all parties and not on the public record, from an interested person outside of the agency to a member of the agency, an administrative law judge, or to an employee involved in the decision-making process.[17] This provision works to prohibit a congressional office from making an ex parte communication to an agency on behalf of a constitutent concerning the merits of an issue which is subject to formal agency proceedings,[18] basically those of a "quasi-adjudicatory" nature or

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[13] See, for example, Legislative Appropriations Act of 1984, P.L 98-51, 97 Stat. 268.
[14] See *Washington Star*, March 19, 1974, p. A3.
[15] Note No. 2, infra.
[16] Public Law 94-409, Section 4.
[17] 5 U.S.C. § 551(14).
[18] Proceedings subject to 5 U.S.C. § 557(a).

those rule making proceedings which must include formal hearings and a decision on the record.

The legislative history of the Government in the Sunshine Act shows that "the prohibition only applies to formal agency adjudication. Informal rulemaking proceedings and other agency actions that are not required to be on the record after an opportunity for a hearing will not be affected by the provision." [19] Thus, congressional offices may apparently make communications to an agency on behalf of a constituent concerning those matters not subject to formal agency proceedings. However, it should be noted that some communications, even if related to matters not in a formal agency proceeding, may become part of a public record concerning that matter in the interest of fairness under various agency regulations, and under a recent decision by a United States Court of Appeals.[20]

The statutory proscription on communicating to agencies concerning a formal agency proceeding applies to communications on the merits of the issue in question, and thus would not extend to inquiries on the status of a proceeding [21] nor to "general background discussions about an entire industry which do not directly relate to specific agency adjudication involving a member of that industry, or to formal rulemaking involving the industry as a whole." [22] As stated in the House Report on the Government in the Sunshine Act: "While the prohibitions on ex parte communications relative to the merits apply to communications from Members of Congress, they are not intended to prohibit routine inquiries or referrals of constituent correspondence." [23]

It should be noted, however, that both the House and Senate reports recognized the possibility that background information or a request for a status report "may in effect amount to an indirect or subtle effort to influence the substantive outcome of the proceedings", and thus in doubtful cases should be treated by agency personnel as an ex parte communication "to protect the integrity of the decisionmaking process." [24]

To meet the requirement of the statutory provisions against ex parte (one-sided) presentations to agencies, the safest procedure is to put the arguments in writing and request that they be made a part of the record and open for the information of all interested parties and the public.

Undue Influence, Fraud. Undue influences upon the administrative process may result from some congressional interventions into ongoing administrative proceedings. Early in the 1950's the late Senator Paul Douglas, in discussing general ethical considerations in congressional interventions in administrative proceedings, noted that a legislator "should not try to intimidate the officials involved and he should make it clear that the final decision is in their hands." [25] Lower Federal court cases have held that certain con-

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[19] S. Rpt. No. 94-354, 94th Congress, 1st Session, p. 35; see also Conference Report, S. Rpt. No. 94-1178, 94th Congress, 2d Session, p. 29.

[20] *Home Box Office* v. *F.C.C.*, 567 F. 2d 9 (1977), cert. den. 434 U.S. 829 (1977); but see also *Action For Children's Television* v. *F.C.C.*, 564 F. 2d 458 (1977).

[21] 5 U.S.C. § 551(14); see S. Rpt. 94-1178, supra at p. 29.

[22] H. Rpt. No. 94-880, Part I, at pp. 20-21.

[23] Id. at 21-22.

[24] Id. at 20-21; see S. Rpt. 94-354, supra at p. 37.

[25] Douglas, supra at p. 90.

gressional interference with an ongoing administrative proceeding may so unduly influence the proceeding that the decision reached by the agency will be nullified by the court because of considerations of due process and fairness towards the parties to the proceeding.[26] The congressional interference which led to the court's nullification of an agency decision in the case of *Pillsbury* v. *F.T.C.*, 354 F. 2d 952 (5th Cir. 1966), concerned the questioning of agency officials in congressional hearings regarding the reasons or rationale for deciding an issue still pending before the officials in a formal setting.

There is no statutory provision stating a specific prohibition against the use of undue or improper influence or pressure upon a Federal agency. However, in more extreme cases one's conduct could possibly result in an indictable offense. In 1970 a United States District Court sustained an indictment against two individuals, one a congressional aide, for conspiracy to defraud the United States concerning the exertion of "dishonest, unlawful, impaired and undue pressure and influence" upon Federal administrators. The court in the case of *United States* v. *Sweig,* 316 F. Supp. 1148 (1970), sustained count one of a grand jury indictment charging the defendants with a violation of the Federal conspiracy statute, 18 U.S.C. § 371. The indictment specifically charged that defendants conspired:

> with each other and with other persons to the grand jury known and unknown, to defraud the United States and agencies thereof, in connection with its lawful governmental functions hereinafter described, to wit: (a) its lawful function to have its business and affairs conducted honestly and impartially as the same should be conducted, free from fraud, improper and undue influence, dishonesty, unlawful impairment and obstruction; (b) its lawful right to have its officers and employees free to transact the official business of the United States unhindered, unhampered, unobstructed, unimpaired and undefeated by the exertion upon them of dishonest, unlawful, impaired and undue pressure and influence.

The indictment charged that defendants had misused the office and influence of the Speaker of the House and had pressured various Federal agencies and their employees by stating that they represented the Speaker, and the Speaker was personally interested in a certain matter pending before the agency. As stated by Count One of the Grand Jury indictment:

> 5. Among the means by which defendants and their coconspirators would carry out their unlawful purpose were the following:
>
> (a) The defendants, Nathan Voloshen and Martin Sweig would and did make telephone calls from the office of the Speaker of the House and elsewhere to various officers and employees of the United States of America expressing the

[26] *Pillsbury* v. *F.T.C.*, 354 F. 2d 952 (5th Cir. 1966); see also *D.C. Federation of Civic Associations* v. *Volpe*, 459 F. 2d 1231 (D.C. Cir. 1971), *cert. den.* 405 U.S. 1030 (1972).

> interest of the office of the Speaker of the House in said matters pending before said agencies.
>
> (b) Nathan Voloshen and Martin Sweig the defendants, would and did visit personally the offices of various officers and employees of the United States of America and express the interest of the office of the Speaker of the House in said matters pending before said agencies.

Nathan Voloshen pleaded guilty to one count of conspiracy and three counts of perjury. Martin Sweig, who, unlike Voloshen, was actually in the employ of the office of the Speaker, was acquitted by a jury on the "influence peddling" conspiracy charges, but was found gulity on one charge of perjury. As reported by the press on July 10, 1970:

> The verdict was a personal triumph for defense counsel Smith, who argued that Sweig's efforts in contacting federal agencies were a customary practice on Capitol Hill and not unlawful even if the jurors might find the practice unfair.[27]

Earlier, the press had quoted Sweig's defense attorney concerning the Congressional ethics of intervening for individuals before a Federal agency:

> Congress has never made criminal the acts alleged against Sweig, says Smith. It would be presumptuous in the extreme and in clear violation of constitutional separation of powers for the judiciary to impose standards of conduct on legislative employees when the Congress has declined to do so.[28]

It should be noted, however, that Sweig was later indicted, on November 3, 1971, on new charges stemming from the influence peddling scheme. On January 28, 1972, he was convicted of bribery and conspiracy charges relating to his acceptance of money in the scheme of using the office of the Speaker to attempt to improperly influence governmental decision making.[29]

Congressional Standards. Although it may have been argued that there were no apparent congressional standards of conduct concerning contacts with agencies at the time of the alleged activities of Sweig and Voloshen, the House Standards of Official Conduct Committee issued an advisory opinion on January 26, 1970, specifically setting guidelines and standards of conduct for communicating with executive and independent agencies of the Federal Government. The opinion basically states that an appropriate course of conduct would be to introduce an individual to an agency and arrange interviews and meetings for the individual; to provide a character reference for the individual or parties involved; and to urge prompt and fair consideration of the matter on the merits of the case. Inquiries as to the status of a proceeding or ruling may be directed to an agency or department, and reconsideration, arguably supported by an interpretation of Federal law, regulation, or legislative intent, may be requested. If a Member has a strong feeling

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[27] See *Washington Post*, July 10, 1970, p. A1.
[28] See *Washington Post*, February 25, 1970, p. A 10.
[29] *United States* v. *Sweig*, Criminal Action No. 71-650 (S.D. Fla.).

about a particular case, judgment upon the merits of the case may be expressed or argued, subject, of course, to the prohibitions and restrictions on ex parte communications concerning formal agency proceedings. If arguments are presented, no direct or indirect threat of reprisal, or promise of favoritism or benefit should be suggested or inferred.

The standards expressed by the Committee on Standards of Official Conduct state specifically as follows:

REPRESENTATIONS

This Committee is of the opinion that a Member of the House of Representatives, either on his own initiative or at the request of a petitioner, may properly communicate with an Executive or Independent Agency on any matter to:

request information or a status report;
urge prompt consideration;
arrange for interviews or appointments;
express judgment;
call for reconsideration of an administrative response which he believes is not supported by established law, Federal Regulation or legislative intent;
perform any other service of a similar nature in this area compatible with the criteria hereinafter expressed in this Advisory Opinion.

PRINCIPLES TO BE OBSERVED

The overall public interest, naturally, is primary to any individual matter and should be so considered. There are also self-evident standards of official conduct which Members should uphold with regard to these communications. The Committee believes the following to be basic:

1. A Member's responsibility in this area is to all his constituents equally and should be pursued with diligence irrespective of political or other considerations.
2. Direct or implied suggestion of either favoritism or reprisal in advance of, or subsequent to, action taken by the agency contacted is unwarranted abuse of the representative role.
3. A Member should make every effort to assure that representations made in his name by any staff employee conform to his instruction.[30]

The Committee's Advisory Opinion noted as a "clear limitation" on representation, the acceptance of compensation for such service as prohibited at 18 U.S.C. § 203. Additionally, it should be noted that after the issuance of the Advisory Opinion another "clear limitation" has been enacted into law, that is, the prohibition on ex parte communications from interested persons to an agency concerning the merits of a matter subject to forma! agency proceedings, as stated within 5 U.S.C. § 557(d).

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[30] House Committee on Standards of Official Conduct, Advisory Opinion No. 1, issued January 26, 1970.

Recommendations for Employment in the Competitive Service. Members of Congress are often requested to recommend a constituent for employment in the Federal Government. The regulatory and statutory framework of the merit system does not work to prohibit the making of recommendations or referrals by a congressional office on behalf of a Federal job seeker. However, although such referrals may be made, the statutes and regulations relating to merit selection in the competitive service specifically prohibit a Federal officer with authority to appoint persons in the service from considering the political affiliation of an applicant in his decision to hire,[31] or from considering the recommendation made by a Member of Congress except as to the character or residency of the applicant.[32]

Employment in the competitive service of the Federal Government is intended to be based upon the "merit system." [33] Briefly, a register of eligibles is maintained by the Office of Personnel Management consisting of the names of all applicants who have qualified in examinations for competitive service.[34] In general, an appointing officer of an agency or department may exercise his own discretion to a great degree in choosing an "eligible" from the register to fill a vacancy within that agency.[35] The appointing officer, however, may exercise this discretion, and make his choice, solely on the basis of merit and fitness of the applicant.[36] Further, such discretion may not be exercised in an arbitrary or capricious manner.[37]

Compliance with the general regulations concerning appointments and selections into the Government service by an appointing officer would apparently rule out the selection of an applicant on a basis other than merit and fitness, such as on the basis of a personal recommendation by a Member of Congress. These regulations apparently do not, however, rule out the consideration of a "character reference" as one factor in determining the fitness of an applicant. Undue pressure or influence upon a hiring authority concerning a recommendation or a referral may, however, entail an unlawful circumvention of the merit system.

The statutory provision on congressional recommendations into the competitive service, 5 U.S.C. § 3303, states simply that "An individual concerned in examining an applicant for or appointing him in the competitive service may not receive or consider a recommendation of the applicant by a Senator or Representative, except as to the character or residence of the applicant." The effect of this statute on recommendations given by and received from congressional offices was summarized by the Civil Serivce Commission in its "Report on Alleged Political Influence in Personnel Actions of the General Services Administration", September, 1973:

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[31] See Executive Order No. 10577, section 4.2, see now 5 U.S.C. § 2301, 5 U.S.C. § 2302(b) (1), (3), P.L. 95–454.
[32] 5 U.S.C. § 3303; see also 5 U.S.C. § 2302(b)(2), P.L. 95–454.
[33] See 5 U.S.C. § 2301, P.L. 95–454.
[34] 5 U.S.C. § 3313; see 5 U.S.C. § 3304.
[35] 5 C.F.R. § 330.101; 5 U.S.C. § 3318.
[36] 5 C.F.R. § 330.101, 332.404.
[37] *Blackman* v. *United States*, 354 F. 2d 340 (1965).

To put these findings and conclusions in proper perspective, it is necessary to understand that there is nothing wrong in the act of a Member of Congress or any other partisan source referring an individual to a Federal agency for possible employment. This is so whether the referred individual is Republican or Democrat, constituent or stranger, and regardless whether referrer and referred are or are not members of the same political party. 5 U.S.C. 3303 states "An individual concerned in examining an applicant for or appointing him in the competitive service may not receive or consider a recommendation of the applicant by a Senator or Representative, except as to the character or residence of the applicant." This provision is not a ban on referrals, and actually anticipates that referral will be made. What this statute restricts is not communications or referrals, but the reception the appointing official is free to give to referrals. Accordingly, the simple use of a political party label to condemn the otherwise innocent activities of the referrer who bears that label cannot be substituted for a demonstration that politics influenced or was intended to influence any of those activities.

Recommendations for Employment in the Postal Service. Guidelines have also been established by statute with respect to the selection of employees for the Postal Service. In addition to prohibiting the receipt or consideration of congressional recommendations as in the competitive service provisions, the Postal Service statute at 39 U.S.C. §1002 also prohibits Members of Congress from "making or transmitting" recommendations to the Postal Service other than statements as to the character or residence of the applicant, except upon the request of the Postal Service or upon request of an authorized representative of the Government for purposes of determining loyalty or character.

General Statutory Prohibitions. In regard to Federal employment or appointment, statutory law prohibits generally any candidate from promising the appointment or the use of his influence in appointing someone to any public or private post in return for the support of one's candidacy; [38] prohibits anyone from promising employment or other benefit, or special consideration in obtaining such employment or benefit provided for or made possible in whole or in part by an act of Congress, in return for political activity or support; [39] prohibits the denial or the threatening of any Federal employment or employment made possible through Federal funds as a means of securing political contributions from any person; [40] and prohibits the receipt of anything of value in return for the promise of support or use of influence in obtaining someone a Federal post.[41]

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[38] 18 U.S.C. § 599.
[39] 18 U.S.C. § 600.
[40] 18 U.S.C. § 601.
[41] 18 U.S.C. § 211.

Chapter 5. THE FRANKING PRIVILEGE

Highlight

A Member's frank is to be used only to mail material relating to the official duties, activities, and business of a congressional office.

The frank may be used for such items as:

—constituent mail relating to public issues;
—press releases, newsletters, and questionnaires;
—mail to other legislators or government bodies;
—Federal publications, laws, regulations, the Congressional Record.

The frank may *not* be used for such items as:

—political or personal mail matter;
—the solicitation of any funds;
—holiday greeting cards, or reports on a Member's family;
—expression of condolences on a personal loss, or congratulations on a personal achievement.

A Member's frank may not be loaned to any person or organization other than official congressional committees as authorized in the franking law.

A Member's staff engaged in sending out mail matter should:

—be familiar with the franking regulations issued by the House Commission on Congressional Mailing Standards;
—seek advice and consultation on questions of frankability of mail matter from the Commission on Congressional Mailing Standards;
—submit a sample of proposed "postal patron" mail to the Commission on Congressional Mailing Standards for an advisory opinion;
—Observe the restrictions on the timing, source of financing, number, and permissible geographical area covered concerning mass mailings and postal patron mailings.

Chapter 5. THE FRANKING PRIVILEGE

Members of Congress, each of the elected officers of the House, and the Legislative Counsel of the House are authorized to send as "franked" mail, material relating to the official business, duties, and activities of their office.[1] The term "frank", which is derived from the latin word "francus" meaning "free",[2] denotes the autograph or facsimile signature of a person authorized to transmit matter through the mail without prepayment of postage.[3]

Criminal penalties are provided in the United States Code for misuse of the franking privilege, that is, for using a franked envelope or endorsement to avoid paying postage on a private letter or package.[4] Additionally, a misuse of the frank of a Member by a staff employee may be imputed to the Member,[5] which may result in a complaint against the Member and/or the payment of restitution to the Treasury for the cost of an intentional or negligent improper use of the franking privilege.[6]

The House Commission on Congressional Mailing Standards, which is authorized to give advisory opinions on the frankability of mail matter, as well as to issue regulations and hear complaints on the franking privilege in the House, suggests that each Member of the House "assign a staff member familiar with the franking laws and regulations to supervise preparation of the mailing so that obvious violations of the franking laws are avoided before submitting the material for an advisory opinion." [7] As to the responsibilities of staff members concerning the franking privilege of a Member, the Commission on Congressional Mailing Standards has stated the following in its published regulations:

RESPONSIBILITY OF MEMBER'S STAFF

> The actual determination of whether or not to send a particular piece of mail under a Member's frank probably will be made by his staff who prepare his mail for delivery. An improper use of the frank by a staff member, ranging from an inadvertent mistake or a willfull abuse on a single letter or a mass mailing, will be imputed to his Member, under most circumstances. To help avoid these violations of the franking law, with all of their resultant possible penalties and the reflections on the effective administration of his office, a Member should reasonably assure that

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[1] 39 U.S.C. § 3210(b)(1).
[2] *Black's Law Dictionary*, 4th Ed. 1968, p. 787.
[3] 39 U.S.C. § 3201.
[4] 18 U.S.C. § 1719.
[5] Regulations of the House Commission on Congressional Mailing Standards, Feb. 1979 (Hereinafter referred to as "Regulations"), Chapter 1, para. 8.
[6] Regulations, Chapter 2, para. 19.
[7] Regulations, p. 23, Pursuant to Rule XLVI, Rules of the House, as contained in H. Res. 287.

his staff knows what kinds of mail are frankable by providing for the training and supervision of these employees and their familiarization with these regulations. Members should encourage their staff, especially in the case of mass mailing, to consult with and seek the advice of the commission to the greatest extent possible.[8]

Authorization to Use the Frank. In addition to the grant of the franking privilege to Members of Congress, House officers, and the House Legislative Counsel, the surviving spouse of a Member, if the Member dies during his term of office, is authorized to use the frank for up to 180 days following the Member's death.[9] Members of Congress and others who have been granted the franking privilege may use the frank for 90 days following the date on which they leave office to close the official business of the congressional office.[10]

Material relating to the official business of a committee of the House may be sent under the frank of the chairman of the committee, the ranking minority member of the committee, subcommittee or congressional commission.[11] As noted in the regulations of the Commission on Congressional Mailing Standards, the authorization to use the franking privilege of a Member extends to "official" committees created by Congress and made up exclusively of Members, but does not extend to "informal" or "ad hoc" groups of Members, "whose business relates to political, party policy, or special interest matters."[12]

The franking law specifically prohibits the loaning of a Member's frank to any group, organization, or person other than the official congressional committees noted above or the Republican conference or Democratic caucus of the House.[13] The regulations on the frank also note that under the rules concerning the prohibition of loaning of the frank, that there is no authorization for providing a franked envelope to members of the public for return mail to a Member or committee of Congress.[14]

General Standards of Frankability. Basically, the congressional franking privilege is available only for the transmittal of material of an official legislative nature, and material which is purely personal or political may not be sent under the frank of the Member or congressional officer. The franking statute expresses Congress' intent to allow mail matter to be sent under the frank which concerns "the official business, activities, and duties of the Congress," entailing all matters which "directly or indirectly pertain to the legislative process or to any congressional representative functions generally."[15]

The franking law and the regulations promulgated under it by the Commission on Congressional Mailing Standards note that the usual and customary newsletter, news release, or questionnaire, re-

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[8] Regulations, Chapter 1, para. 8.
[9] 39 U.S.C. § 3218. If there is no surviving spouse, then a member of immediate family of the Member as designated by the Clerk of the House. (As amended by P.L. 97-69.)
[10] 39 U.S.C. § 3210(b)(3).
[11] Regulations, Chapter 1, para. 4.
[12] Id.
[13] 39 U.S.C. § 3215.
[14] Regulations, Chapter 1, para. 5.
[15] 39 U.S.C. § 3210(a)(2).

lating to official activities or public issues, are those types of items which may be sent under the franking privilege. The regulations of the Commission go into some detail on guidelines and requirements as to the permissible contents of newsletters and news releases. The regulations caution Members, for example, on the excessive use of personally phrased references (Member's name, "I", "me", "the Congressman") in newsletters and other mass mailings, recommending that such phrases generally be limited to an average of eight times in the text of a page.[16] The regulations further provide guidelines on the permissible number and size of pictures or sketches of the Member in newsletters, releases, meetings notices or other mass mailings, stating that a photograph may be part of the masthead of a mailer, but that it should not cover more than 6 percent of the page, up to a maximum of six square inches.[17] Further, the regulations provide that newsletters should contain not more than two pictures on any one page, not exceeding 20 percent of the page,[18] and that the pictures should relate to the text of the material rather than merely to advertise the Member.[19]

The Commission's regulations provide examples of items which are frankable (voting records, Member's positions, itineraries, statements of financial disclosure) and those which are non-frankable (autobiographical material, political material such as references to future or past campaigns, announcements of filing for reelection, campaign schedules, or personal reports of a Member or his family) in a newsletter or news release.[20]

In addition to the mailing of official material relating to congressional business or public concerns under the frank, the laws and regulations note that biographical material or pictures of the Member may be sent under the frank when specifically requested, or when part of a Federal publication.[21] Non-partisan voting information may also be sent under the frank.[22] Condolences to one suffering a loss may not be franked, nor may congratulations on a private distinction. However, congratulations on a public distinction may still be sent under the frank.[23] Holiday greeting cards are specifically prohibited from being sent as franked mail.[24]

Summary of Guidelines Under the Frank. Following is a summary listing of those items noted in the franking statutes as examples of either frankable on non-frankable mail matter.[25] As noted above, the regulations promulgated by the Commission on Congressional Mailing Standards have established detailed requirements and guidelines concerning some of the items listed below, and have provided examples of permissible or non-permissible items under the various headings.

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[16] Regulations, Chapter 2, para.4. See amendments to regulations in "Dear Colleague" letter of June 13, 1983 from Rep. Udall, Chairman, Commission on Congressional Mailing Standards.
[17] Regulations, Chapter 2, para. 4.
[18] Id.
[19] Id.
[20] Regulations, Chapter 2, para. 4(c).
[21] 39 U.S.C. § 3210(a)(3)(J).
[22] 39 U.S.C. § 3210(a)(3)(H).
[23] 39 U.S.C. § 3210(a)(3)(F). As amended by P.L. 97-69, see specifically "Dear Colleague" letter of October 30, 1981, from Reps. Udall and Derwinski regarding changes in franking practices under P.L. 97-69.
[24] 39 U.S.C. § 3210(a)(5)(iii).
[25] See H. Rpt. No. 93-98, 93d Congress, 1st Session.

FRANKABLE MAIL MATTER

1. Mail to any person and to any government agency relating to matters and programs of public concern and Congressional actions (39 U.S.C. § 3210(a)(3)[A]).

2. Newsletters and press releases dealing with the impact of laws on governments and the public, official action of Members, discussions of proposed or pending legislation, and positions of Members on, and arguments for and against such matters (39 U.S.C. § 3210(a)(3)[B]); see regulations of Commission on Congressional Mailing Standards for examples of frankable and non-frankable items in newsletters, guidelines on use of personal references to the Member and pictures or sketches of Member in newsletters).

3. Questionnaires seeking public opinion (39 U.S.C. § 3210(a)(3)[C]).

4. Mail between a Member's various Congressional offices (39 U.S.C. § 3210(a)(3)[D]).

5. Mail to other Members of Congress and all other legislators (39 U.S.C. § 3210(a)(3)[E]).

6. Mail expressing congratulations to a person who achieved some public distinction (39 U.S.C. § 3210(a)(3)[F]).

7. Mail consisting of Federal regulations, or other publications containing general information (39 U.S.C. § 3210(a)(3)[G]).

8. Mail containing non-partisan voter registration or election information (39 U.S.C. § 3210(a)(3)[H]).

9. Mail containing biographical material in Federal publications or in response to specific requests and not included in newsletters or other mass mailings (39 U.S.C. § 3210(a)(3)[I]).

10. Mail consisting of pictures in Federal publications or in response to a specific request therefor, and, if in a newsletter, not of such size and frequency which would advertise the Member rather than to illustrate the accompanying text (39 U.S.C. § 3210(a)(3)[J]); see regulations of Commission on Congressional Mailing Standards as to guidelines and requirements for pictures and sketches of Member in newsletters).

11. The Congressional Record (39 U.S.C. § 3212a).

12. Excerpts from the Congressional Record if such material independently meets the test of frankability (39 U.S.C. § 3212b).

13. Mailgrams, if the contents meet the test of frankability (39 U.S.C. § 3219).

14. Reprints, copies, reproductions, facsimiles or recordings of frankable matter may be sent under the frank (39 U.S.C. § 3210(c)).

15. Public documents printed at the order of Congress (39 U.S.C. § 3211).

16. Seeds and agricultural reports (39 U.S.C. § 3213).

NONFRANKABLE MAIL MATTER

1. Mail matter containing laudatory and complimentary articles or texts concerning Members on a personal basis rather than based on official duties or activities of a Member (39 U.S.C. § 3210(a)(5)[A]).

2. Mail matter containing greetings from a Member's family unless it is a brief reference in otherwise frankable mail (39 U.S.C. § 3210(a)(5)(B)[i]), as amended by P.L. 97-69).

3. Any card expressing holiday greetings (39 U.S.C. § 3210(a)(5)(B)[iii]).

4. Mail matter containing reports of a Member or his family's activities other than in connection with official functions and activities of the Member (39 U.S.C. § 3210(a)(5)(B)[ii]).

5. Mail matter containing solicitations for political support for the sender or any person or party or a vote or financial assistance for any candidate (39 U.S.C. § 3210(a)(5)[C]); see regulations of the Commission on Congressional Mailing Standards concerning references to upcoming campaigns, filings for reelection, expressions of gratitude for election, etc. as nonfrankable items in newsletter or news releases.

6. Mail matter which is purely personal to the sender or to any other person (39 U.S.C. § 3210(a)[4]).

7. Any solicitations of funds. (2 U.S.C. § 439b).

8. Mail matter expressing condolences to a person who has suffered a loss or expressing congratulations on a personal distinction (P.L. 97-69, sec. 1).

Mass Mailing. Special requirements and regulations are applicable to franked mailings which are to be sent out in a "mass mailing." The term "mass mailing" is defined to mean a mailing of 500 or more pieces which are substantially identical in content.[26]

Rules of the House of Representatives and the franking law now require that the cost of preparing and printing a mass mailing may be defrayed only from appropriated funds.[27] House Rule and law also restrict the sending of franked mass mailings by a Member who is a candidate for a statewide office only into the area constituting the congressional district from which the Member was elected.[28]

Restrictions are also in effect concerning the timing of mass mailings under the frank. The Rules of the House of Representatives and the franking law now prohibit the sending of any mass mailings under the frank during the sixty days immediately before any primary or general election in which the Member making the mailing is a candidate.[29]

Postal Patron Mail. Mass mailings are often sent out under a simplified form of address which is known as postal patron mail. When a postal patron mailing is made under the frank, such mailing may be sent only into the congressional district from which the Member was elected, or into a congressional district which has been redistricted by a legislative body or by judicial decision, so long as some portion of the old district from which a Member was elected is included in the new district.[30]

Additional restrictions placed upon franked postal patron mailings by the Rules of the House of Representatives have recently been enacted into law. Under these provisions, a Member is restricted in the amount of mail he may send under the frank with a simplified form of address. The total number of pieces which may be franked in this form during a calendar year cannot exceed an

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[26] 39 U.S.C. § 32310(a)(5)(D).
[27] House Rule XLVI(4), 39 U.S.C. § 3210(f), P.L. 97-69.
[28] House Rule XLVI(5), 39 U.S.C. § 3210(a)(6)(A)(ii), P.L. 97-69.
[29] House Rule XLVI(6), 39 U.S.C. § 3210(a)(6)(A) (i), (ii)(II), and (C).
[30] 39 U.S.C. § 3210(d)(1).

amount equal to six times the number of addresses to which such mail may be delivered in the area from which the Member was elected.[31] Exceptions are made to this limit for notices of appearances or a scheduled itinerary of a Member in the district (but not appearances of staff employees only). Such notices or itineraries will not be counted against a Member's limit for postal patron mailing.[32]

Finally, before a postal mailing is made, the House Rules and the franking statute require that a sample or description of the material to be mailed be submitted to the Commission on Congressional Mailing Standards for an advisory opinion and determination on the frankability of the material.[33]

Commission on Congressional Mailing Standards. The revision of the franking laws passed in 1973 established the Commission on Congressional Mailing Standards in the House.[34] This Commission is available to staff for questions and consultation concerning the franking privilege, and is authorized to give advisory opinions concerning the frankability of particular mail matter.[35] In fact, the franking law and the Rules of the House of Representatives presently require, as noted above, that before any "postal patron" mailing is made into a congressional district, a sample or description of the material to be mailed must be submitted to the Commission for an advisory opinion on the frankability of the material.

The Commission on Congressional Mailing Standards has issued regulations on the use of the frank in the House. These regulations go into detail concerning the guidelines and requirements for franked mail and provide examples of permissible or impermissible items or mailings, citing and summarizing decisions and advisory opinions of the Commission. The "Regulations on the Use of the Congressional Frank by Members of House of Representatives" are available from the Commission and should be examined and consulted by congressional employees involved in mailing material under the franking privilege.

Complaints on abuses of the franking privilege are to be made to the Commission for investigation and possible hearing on the matter.[36] The franking statute provides that no court may entertain a civil suit on abuses of the frank except as judicial review of the decisions of the House Commission on Congressional Mailing Standards.[37]

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[31] House Rule XLVI(2), 39 U.S.C. § 3210(d)(5).
[32] Id.
[33] House Rule XLVI(3), 39 U.S.C. § 3210(d)(6)(A).
[34] P.L. 93-191, Sec. 5(a).
[35] P.L. 93-191, Sec. 5(d).
[36] P.L. 93-191, Sec. 5(e).
[37] Id.

Chapter 6. GIFTS, ENTERTAINMENT, AND FAVORS

Highlight

Members and employees of the House may not:

—receive gifts totaling over $100 in a year from anyone, such as a lobbyist, who has a direct interest in legislation before Congress, or from a foreign national or his agent. Gifts of over $35 will be included for the aggregate yearly limit;

—receive any gift from a foreign government, unless it is a souvenir or mark of courtesy of minimal value ($140 or less), or meets other special circumstances approved by the Congress;

—receive favors or benefits in circumstances that might raise suspicions and create the appearance of influencing the performance of official duties;

—receive any bribe, that is, anything of value in return for being influenced in, or as a reward for, performing official duties.

Members of the House may not treat receipts from fundraisers or testimonials as unrestricted personal gifts; but rather must treat such receipts as campaign contributions which may not be used for personal or official congressional purposes.

Members and employees of the House have generally been cautioned to:

—be wary of any gifts, entertainment, or favors offered to them by persons who are not relatives, or personal friends, but which are apparently offered solely because of one's employment or position in the Congress;

—be aware of the identity of any gift giver, his relationship to the Member or any official business, and his possible motives;

—be particularly cautious concerning the receipt of gifts over $35 in value, or gifts from any one source during a year which total over $100 in value.

Members and certain House employees must:

—file annual financial disclosure reports which will reveal the source and value of certain gifts received over specified amounts by the Member or employee, his spouse and dependent children.

Chapter 6. GIFTS, ENTERTAINMENT, AND FAVORS

Considering the representative nature of congressional office, it is natural that pressures and influences will be exerted upon Members and employees of Congress by concerned constituents and interest groups exercising their powers of political persuasion, explanation, or argument on the merits of an issue to further a particular cause or concern. Aside from such legitimate pressures from persuasion, argument and political realities, however, there are types of conduct and activities tending to influence governmental officers or employees which raise serious ethical and legal questions. Such suspect activities include the bestowing of gifts, entertainment, and special favors upon governmental decision-makers and their advisors by those with special interests in governmental decisions. Ethical problems may be encountered in these situations even when the tender or receipt of things of value would not rise to the level of a technical "bribe" under Federal statutory law.

In a committee print entitled "Ethical Standards in Government", a Senate subcommittee headed by the late Senator Paul H. Douglas, in 1951, discussed general ethical considerations concerning the propriety of the receipt of gifts by public officials:

> The line between the proper and improper begins to be less certain when one looks for a consensus of opinion as to favors, gifts, gratuities, and services. The exchanging of gifts and favors is reported to be rather general in the business community. When is it proper to offer public officials and what is it proper for them to receive? A cigar, a box of candy, a modest lunch (usually to continue discussing unfinished business)? Is anyone of these improper? It is difficult to believe so. They are usually a courteous gesture, an expression of good will, or a simple convenience, symbolic rather than intrinsically significant. Normally they are not taken seriously by the giver nor do they mean very much to the receiver. At the point at which they do begin to mean something, however, do they not become improper? Even small gratuities can be significant if they are repeated and come to be expected. But here, too, convention must be considered: gifts to school teachers are now generally forbidden by law, but a Christmas present for the postman, usually on engraved green paper, is almost as well established as holly.
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> Expensive gifts, lavish or frequent entertainment, paying hotel or travel costs, valuable services, inside advice as to investments, discounts and allowances in purchasing are in an entirely different category. They are clearly improper. On this, there is substantial agreement in the governmental community, and any one who thinks

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> them proper must have already lost his perspective. The difficulty comes in drawing the line between the innocent or proper and that which is designing or improper. At the moment a doubt arises as to propriety, the line should be drawn. Innocence is perhaps lost when one is conscious that it exists.[1]

Congress has recognized the general premise that "public office is a public trust." [2] Members of Congress thus hold office to represent the interests of the "beneficiaries" of their trust, that is, the general public whom they were elected to serve. Similarly, Government employees, such as employees of the House, paid from funds of the United States Treasury, are retained to represent the interests of the general public rather than personal, private or special interests. As public servants, Members of Congress and congressional employees are expected to exercise impartial judgment in performing their public duties.[3] The receipt of gifts, entertainment, favors and things of value by Members or employees of Congress from certain persons or special interests may interfere with the impartial judgment and performance of official duties, and may derogate from that public trust inherent in a Government position, in two fundamental ways.

Initially, a gift to a Member or an employee may create a conflict of interest for the recipient. This may be the case of a gift of stocks or other interests in a business to the Member or employee or to the Member's or employee's spouse or dependent children, or the sale of stock to such persons at discount or bargain prices. When matters affecting the donor's business or industry arise in an official capacity, the recipient Member or employee may then be favorably influenced in his official conduct towards that industry because of his personal financial holding. As noted in a study of congressional ethics: "The giver's purpose is usually to create a situation in which the Member has a personal economic stake in common with the giver. Self-interest can then take its course." [4]

This type of ethical problem in gift giving and receiving was the basis for an early congressional scandal when stocks of the Credit Mobilier Corporation were distributed at considerably below market value to several congressmen during the 1860's. The major congressional participants in the scheme were subject to disciplinary proceedings in the Congress.[5]

The receipt of gifts by Members or employees of Congress raises another ethical problem because of the normal sense of gratitude and appreciation in the recipient of a gift, and the expectations of favorable treatment or consideration which may arise in the giver. This is the more common ethical problem in gift giving and may

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[1] Report of a Subcommittee of the Committee on Labor and Public Welfare, United States Senate, 82d Congress, 1st Session, "Ethical Standards in Government", p. 23.

[2] 72 Stat. part 2, p. B 12, H. Con. Res. 175, July 11, 1958, "Code of Ethics for Government Service."

[3] Id. at para. 5; see also *Untied States* v. *Podell*, 436 F. Supp. 1039, 1042 (S.D.N.Y. 1977), *affd* 572 F. 2d 3 (2d Cir. 1978).

[4] *Congress and the Public Trust*, Association of the Bar of the City of New York, James C. Kirby, Jr., Executive Director, New York 1970, p. 179.

[5] See: House of Representatives Exclusion, Censure and Expulsion Cases from 1789 to 1973, Committee Print prepared for the Joint Committee on Congressional Operations, 93rd Congress, 1st Session. pp. 123–125.

arise with even token gifts, favors or entertainment, particularly those that are given with some frequency or regularity. Even when no immediate or specific "quid pro quo" is sought by a gift giver, the sense of gratitude or appreciation in the recipient-Member or employee may pre-dispose him to act more favorably towards the gift giver in some future situation or be influenced by a sense of obligation or loyalty to his "benefactors" and "friends" who have done him favors.[6]

Regardless of any actual corruption or undue influence upon a Member or employee of Congress, the receipt of gifts, entertainment, or special favors by Members or staff from private or special interests may affect the public confidence in the integrity of the institution of the Congress as a whole, and in government in general, as well as the integrity of the individual Member involved. Legitimate concerns of partiality or favoritism, or abuse of one's public position or influence, may be raised by constituents who discover that a Member or his staff has been given expensive gifts by lobbyists or other representatives of special interests.

Members and employees of the House have thus been cautioned to exercise discretion concerning the receipt or acceptance of any gifts, favors and entertainment from persons who are not family members or personal friends, particularly from those persons representing special interests. It has been suggested that recipients of gifts be particularly sensitive to, and cognizant of, various factors concerning gifts or entertainment, such as the source and value of the gift, the frequency of gifts from that source, the relationship of the gift giver to the Member, committee, or to any official business or legislation pending, and the possible motives of the donor of the gift. The Select Committee on Ethics in the 95th Congress emphasized in an advisory opinion that Members and employees should be "alerted to the need to exercise care . . . in accepting gifts from all sources."[7]

In addition to the general ethical problems raised by gift giving as discussed above, specific rules and restrictions on the receipt of gifts and entertainment by Members and employees of the House are in force.

Gifts From Lobbyists, Persons With Direct Interest in Legislation, and Foreign Nationals. Taking into consideration the ethical problems arising from the receipt of gifts by Members and employees, the House of Representives has promulgated rules establishing clear limitations on certain gifts. The House Rules at Rule XLIII(4), presently prohibit Members and employees from receiving gifts aggregating $100 or more a year from lobbyists or others with direct interest in legislation before Congress, or from a foreign national or agent of a foreign national. Gifts of $35 or less, or gifts of personal hospitality of an individual are not included in the $100 aggregate, and gifts from relatives are excluded from the prohibition.

The House Committee on Standards of Official Conduct in the 96th Congress, in recommending that the House censure a Member for financial misconduct, stated that charges of violations relating to the acceptance of gifts from a person with a direct interest in

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[6] See discussion in *Ethics in Government*, by Paul H. Douglas, Cambridge, 1952, pp. 48–49.
[7] House Select Committee on Ethics, Advisory Opinion No. 10, May 11, 1977, p. 3.

legislation before Congress "are considered of a most serious nature by the Committee, as they establish the special interest of the donor in matters over which the donee had influence by virtue of his position in the U.S. Congress."[8] Citing violations of this clause of Rule XLIII, among other violations, the House voted to censure that Member on June 10, 1980.[9]

Exemptions stated in Rule.—The report by the Commission on Administrative Review (popularly known as the Obey Commission) in recommending changes in the Code of Official Conduct of the House Rules in the 95th Congress, noted that such exemptions in Rule XLIII(4) were provided to "identify items which do not cause conflicts of interest and/or which impose unreasonably stringent limitations if not excluded."[10] As noted in the debate preceding the enactment of the amendments to the House Rules in the 95th Congress (H. Res. 287), gifts valued at $35 or less will not be counted toward the $100 aggregate.[11] One of the predominant reasons for providing the $35 exemption was apparently to relieve a Member of the responsibility and burden of accounting for his specific "share" of an event, attributable to him, when attending such events as House receptions and the like.[12]

As to the "personal hospitality" exemption, the Report of the Commission on Administrative Review stated:

> In this regard, it should be noted once again that the Commission understands personal hospitality to mean hospitality extended for a non-business purpose by an individual, not a corporation or organization, on property or facilities owned by that individual or his family.[13]

During the debate on H. Res. 287, 95th Congress, it was expressed that the personal hospitality exemption applied to things such as dinner (exceeding $35) in an individual's own home, but not if the individual took the Member or employee to dinner at a restaurant.[14] (If a dinner were valued at $35 or less, even if the Member or employee were taken to a restaurant, such gift would be exempt from the Rule under the $35 exclusion.) Further, it was intended that the "personal hospitality" exemption would not apply if the individual providing the personal hospitality were being reimbursed by a corporation or an organization.[15] Questions arose during the debate as to how a Member would know whether an individual were being reimbursed or receiving compensation for such hospitality from a corporation or an interest group. The reply was made that a Member must "exercise due care" in receiving gifts of personal hospitality from those who have, or who represent those who have, an interest in legislation before Congress.[16]

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[8] House Report No. 96-930, 96th Congress, 2d Session, *In the Matter of Representative Charles H. Wilson*, May 8, 1980.

[9] *Congressional Record*, June 10, 1980, H 4691-H 4708 (daily ed.).

[10] House Doc. No. 95-73, 95th Congress, 1st Session, "Financial Ethics", p. 14; see also House Select Committee on Ethics, 95th Congress, Advisory Opinion No. 9, May 11, 1977, p. 2.

[11] *Congressional Record*, March 2, 1977, H. 1578 (daily ed.).

[12] *Congressional Record*, supra at H. 1577, remarks by Congressman Obey; see also Advisory Opinion No. 9, supra at p. 2.

[13] House Doc. No. 95-73, supra at p. 14.

[14] *Congressional Record*, supra at H. 1578.

[15] Id.

[16] Id., remarks by Representatives Brown and Hamilton.

Persons with direct interest in legislation.—The prohibition on gifts in Rule XLIII(4) goes to those gifts "from any person (other than a relative) having a direct interest in legislation before the Congress or who is a foreign national." The Rule notes that such "interested" persons include registered lobbyists, officers or directors of registered lobby groups, and employees of registered lobby groups who attempt to influence legislation before Congress. Both the debate preceding the enactment of H. Res. 287, and the report by the Commission on Administrative Review, made clear that the inclusion of "lobbyists" and officers and directors of lobby organizations within the Rule as those deemed to have a "direct interest" in legislation, was not intended to be an all-inclusive, limiting definition of that term.[17]

Thus, pursuant to its authority under H. Res. 383, 95th Congress, to issue advisory opinions on the amended Code of Official Conduct, the Select Committee on Ethics in an advisory opinion found that any person, group or organization which hires a lobbyist would be an "interested" person; and that any corporation, labor organization, or other group which maintains a separate segregated fund for political purposes, known as a political action committee, and the affiliates, and officers or directors of such organizations, would be considered to be persons with a direct interest in legislation before the Congress.[18] As a general rule concerning "interested" persons, the Select Ethics Committee was of the opinion that to conform to this House Rule, Members of the House should not accept gifts aggregating over $100 from "any individual or organization which the Member or employee knows has a distinct or special interest in influencing or affecting the federal legislative process which sets such individual or organization apart from the general public." [19] Thus, for example, the Select Committee in an earlier advisory opinion found that airline carriers, since they are regulated by the Federal Government, are considered to have a direct interest in legislation before the Congress.[20] In summing up, the Select Committee emphasized the need for Members and employees to exercise care in accepting gifts from all sources.[21]

However, in its final report, the Select Committee also stated that if the Member does not believe that the donor of the gift has a direct interest in legislation, as so defined, then he should feel free to accept such gifts. The Select Committee emphasized that "the gifts limitation is not intended to interrupt or interfere with normal social relationships," and noted that gifts over $100 would be subjet to disclosure requirements.[22]

Items not included as gifts.—Since the limitation in House Rule XLIII(4) is upon "gifts", this restriction would apparently not apply to compensation received for "services rendered." The Select Committee in another advisory opinion found, for example, that as for transportation, food, and lodging expenses for a Member or employ-

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[17] *Congressional Record*, supra at 1615.
[18] House Select Committee on Ethics, Advisory Opinion No. 10, May 11, 1977.
[19] Id.
[20] House Select Committee on Ethics, Advisory Opinion No. 3, April 6, 1977.
[21] Advisory Opinion No. 10, supra.
[22] House Report No. 95-1837, 95th Congress, 2nd Session, Final Report of the Select Committee on Ethics, p. 11.

ee and the Member's or employee's spouse in connection with a conference or similar event, such expenses would not be considered "gifts" if the Member or employee substantially participated in the conference and performed services to the extent that such services constituted "equal consideration" for the expense received.[23] Additionally, the Select Committee, in its final report, noted that the payment of travel expenses and waiver of an entrance fee for a Member of the House to participate in celebrity or Pro-Am golf tournaments would not be considered a gift to the Member "since the Member is, in effect, rendering a service on behalf of the foundation sponsoring the tournament." [24]

It should be noted that in a later opinion the Select Committee found that necessary expenses (not entertainment) for a "fact-finding" tour, even when no services were rendered by an employee or Member, might not be a prohibited gift when the narrowly defined "fact-finding event" is "directly related to official duties", and is not for the personal pleasure or entertainment of the employee or Member, but rather to allow them "to become better informed regarding subject matters closely related to their official duties." [25] The Select Committee noted in this opinion that a "fact-finding" event for educational purposes might include such items as an oil company sponsoring "an inspection tour of its off shore oil drilling platform," a lumber company arranging "a demonstration of new logging methods in a remote area", or a foreign foundation inviting Members to attend a program "designed to promote better understanding and improve U.S. relations with that country." [26] The Select Committee emphasized, however, that the term "fact-finding" event is intended to be interpreted narrowly in the "spirit" of the House Rules and thus would not cover such things as "free transportation on a corporate jet or commercial flight from Washington to [a Member's] district, on grounds that he would 'tour' the corporate facilities there" (since Members are provided official travel allowances to their own districts); "travel expenses provided by representatives of the maritime industry to attend a ship-launching"; [27] or inaugural flights of airlines.[28] The Select Committee also noted that the expenses of a Member's or employee's spouse in an overseas "fact-finding" event may properly be accepted under this opinion since it may be desirable for a spouse to attend such a function for protocol and diplomatic reasons. However, the acceptance of expenses of a Member's or employee's spouse for a domestic "fact-finding" tour would probably not be permissible under the exclusions allowed in the Select Committee's advisory opinion.[29]

The House Select Committee defined generally the term "gift" for purposes of the House Rule, and provided general exceptions as to what items would *not* be considered gifts for purposes of the pro-

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[23] House Select Committee on Ethics, Advisory Opinion No. 2, April 6, 1977.
[24] House Report 95-1837, 95th Congress, 2d Session, Final Report of the Select Committee on Ethics, p. 9.
[25] House Select Committee on Ethics, Advisory Opinion No. 8, May 11, 1977, 23. Id. at p. 1.
[26] Id. at p. 1.
[27] Id. at p. 3.
[28] House Select Committee on Ethics, Advisory Opinion No. 3, April 6, 1977.
[29] Advisory Opinion No. 8, supra at p. 2.

hibition in Rule XLIII(4). The summary of the Committee's opinion, as amended in its final report follows:

> For purposes of Rule XLIII, clause 4, a gift is defined as follows:
>
> A payment, subscription, advance, forbearance, rendering, or deposit of money, services, or anything of value, including food, lodging, transportation, or entertainment, and reimbursement for other than necessary expenses, unless consideration of equal or greater value is received by the donor.

The Select Committee found, based on the language of new Rule XLIII, clause 4, the Rule's legislative history, the absence of conflict of interest issues, and/or public policy considerations, that the following items are not gifts for purposes of Rule XLIII, clause 4:

(1) Bequests and other forms of inheritance;

(2) Loans made in a commercially reasonable manner (including requirements that the loan be repaid and that a reasonable rate of interest be paid);

(3) Political contributions as defined by the Federal Election Commission and otherwise reported as required by law;

(4) Food, lodging, transportation, and entertainment provided on an official basis by federal, state, and local governments or political subdivisions thereof;

(5) Food, lodging, transportation, and entertainment provided by a foreign government within a foreign country;

(6) Communications to a Member's offices in Washington and his district, including subscriptions to newspapers, magazines, and other periodicals;

(7) Bona fide awards presented in recognition of public service and available to the general public;

(8) Suitable mementos of a function honoring the Member, officer, or employee;

(9) Consumable products provided by home-state business to a Member's office that are primarily intended for consumption by persons other than the Member and his staff;

(10) Food and beverages consumed at banquets, receptions or similar events.[30]

Valuation of certain gifts.—The House Select Committee on Ethics of the 95th Congress noted in its final report certain guidelines for the valuation of some gifts which might be offered to Members and staff. The Committee noted that the gift of a ticket to a political fund-raising dinner (such as a $500-per plate fundraiser), should be valued at the cost of the dinner rather than the cost of the ticket to the purchaser. The Committee also found that the value of a courtesy pass to an amusement park would be determined by the number of times the pass was actually used. Similarly, the Committee noted that an honorary membership to a country club is valued according to the actual use. Thus, if the membership were never used, it would have no value. However, if the Member or employee and their family regularly enjoyed the benefits of the country club, the membership gift would be valued at

[30] House Select Committee on Ethics, 95th Congress, Advisory Opinion No. 7 May 9, 1977.

the rate of normal dues to that club. On the other hand, however a gift of a season ticket to an athletic event or the theatre is valued at the cost of the tickets, regardless if actually used, "since it is readily transferable." [31]

Gifts to spouse or dependents.—House Rule XLIII(4) prohibits Members from receiving gifts from "interested" persons or foreign nationals either "directly or indirectly." The Select Committee on Ethics noted that although the term "indirectly" may apply to gifts from agents of these persons who would be prohibited from giving directly to employees and Members, such term refers mainly to gifts to the spouse or dependents of a Member or an employee. The Select Committee noted that, generally, gifts to a spouse or dependent of a Member or employee would be considered an "indirect" gift to that Member or employee. However, when circumstances make it clear that a gift is truly independent of a spouse's or dependent's relationship to the Member or employee, then such a gift will not be considered a gift to the Member or employee under House Rule XLIII(4).[32] The Committee also found in this opinion that simultaneous gifts such as dinner or reception invitations to a Member and his spouse and dependents should be treated as separate gifts, and need not be aggregated for purposes of the $35 exclusion or the $100 maximum within Rule XLIII(4). Thus, for example, dinner invitations valued at approximately $20 each extended to a Member and his spouse, would be considered two $20 gifts (thus falling under the $35 exemption), rather than one $40 gift.

Gifts From Foreign Governments. Members and employees of Congress are prohibited by the provisions of the United States Constitution (at Article I, Sec. 9, clause 8), from receiving a gift or "present * * * of any kind whatever" from a foreign state or a representative of a foreign government without the consent of the Congress. Congress has consented, in the form of the Foreign Gifts and Decorations Act,[33] to the acceptance of gifts from foreign governments of minimal value[34] ($140 or less) when tendered as a souvenir or mark of courtesy, and other gifts from foreign governments under special circumstances.

In addition to gifts of minimal value, the Foreign Gifts and Decorations Act allows the acceptance (but not the retention) of a gift of more than minimal value when refusal of the gift would cause offense or embarrassment or otherwise adversely affect United States foreign relations.[35] Such gifts, however, within 60 days after acceptance, must be turned over to the United States for use or disposal.[36] Additionally, a Member or employee may accept gifts from foreign governments in the form of educational scholarship or medical treatment;[37] in connection with an approved cultural exchange program;[38] and may accept payments for foreign travel ex-

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[31] House Report 95-1837, supra at p. 9.
[32] House Select Committee on Ethics, 95th Congress, Advisory Opinion No. 9, May 11, 1977.
[33] 5 U.S.C. § 7342, as amended by P.L. 95-105.
[34] 5 U.S.C. § 7342(c)(1)(A), and (a)(5); 46 F.R. 51389, October 20, 1981, see 41 C.F.R. § 101-49.001-5.
[35] 5 U.S.C. § 7342 (c)(1)(B).
[36] 5 U.S.C. § 7342 (c)(2).
[37] 5 U.S.C. § 7342 (c)(1)(B).
[38] 5 U.S.C. § 2458a.

penses outside of the United States when in the interest of the United States and approved by the House Committee on Standards of Official Conduct.[39]

The Committee on Standards of Official Conduct has issued regulations concerning the prohibited and permissible receipt of gifts from foreign governments by Members, officers, and employees of the House.[40] Concerning travel or expenses for travel outside of the United States, the Committee has approved the acceptance of such travel or expenses when it relates "directly to the official duties of the Member, officer, or employee." [41] The regulations allow the acceptance of the gift of travel or expenses by the spouse or dependent of the Member or employee (which would otherwise have been prohibited under the provisions of the Foreign Gifts and Decorations Act) when accompanying such Member or employee on a trip. The committee regulations specifically note, however, that travel or expenses for travel "may not be accepted merely for the personal benefit, pleasure, enjoyment or financial enrichment of the individual or individuals involved." Any gift of travel or travel expenses accepted by a Member or employee must be disclosed in a disclosure statement within 30 days after acceptance, and tangible gifts of more than minimal value must be disclosed at the time of deposit of such gift with the Government.

Fundraisers and Testimonials. The Rules of the House, at Rule XLIII(7), now provide that any proceeds from testimonial dinners or other fund raising events for a Member are to be treated as campaign contributions, subject to all the restrictions on campaign funds. Thus, any proceeds from testimonials or other fund raisers may only be used by the Member for bona fide campaign purposes,[42] and may not be treated as unrestricted personal gifts to the Member. Specifically, any campaign funds under the Rules of the House may not be converted to personal use,[43] nor be used for official congressional purposes.[44]

The restriction of Rule XLIII(7) in its present form derived from H. Res. 287, 95th Congress, 1st Session, and revised the former House Rule which had allowed Members to use such proceeds for other than campaign purposes if advance notice had been given to the participants of the fund raiser. In recommending the change to the more stringent Rule, the Commission on Administrative Review of the 95th Congress stated simply: "Proceeds from testimonial dinners should not be converted to funds for personal use under any circumstances." [45]

In an Advisory Opinion, the House Select Committee on Ethics found that a direct mail solicitation by a Member of the House or the spouse of a Member constitutes a "fund-raising event" for purposes of House Rule XLIII(7), and thus proceeds from such a solicitation must be treated as campaign contributions which may not

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[39] 5 U.S.C. § 7342 (c)(B)(ii).
[40] See regulations published in *Congressional Record*, January 23, 1978, H 112 (daily ed.).
[41] House Committee on Standards of Official Conduct, Regulations for the Acceptance of Decorations and gifts, Including Travel or Expenses for Travel or Expenses for Travel, by Members, Officers, or Employees of the House of Representatives from Foreign Governments, Section 6(e).
[42] House Rule XLIII(6); See section on use of campaign funds, Chapter 10 of this report.
[43] House Rule XLIII(6); See also 2 U.S.C. § 439a as amended by P.L. 96-187.
[44] House Rule XLV, XLVI(4).
[45] House Doc. No. 95-73, supra at p. 14.

be converted to personal use by the Member. Finding such, the Select Committee noted that a major purpose of the revisions of the Code of Official Conduct was to prevent Members from "cashing in" on their official position in the Congress:

> But in view of the widespread use of mass mailings to raise funds (direct mail solicitation has become a principal fund raising technique since 1968), it would appear that the proposal under consideration constitutes a fund-raising event. In the age of computerized mass mailings, it is unnecessary for people to gather together in a common place on a particular date to constitute a "fund-raising event."
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> A major thrust of the provisions contained in the new House Rules adopted March 2, 1977, was to severely limit the potential for Members to "cash in" on their positions of influence for personal gain. Therefore, a limitation on outside earned income was proposed and adopted. A proposal to abolish unofficial office accounts was offered and adopted. A proposal to prohibit the conversion of political funds to personal use was adopted. And the proposal discussed above to treat all proceeds from fundraising events as campaign contributions was also adopted. Therefore, it would appear that a proposal to solicit funds for personal use would be contrary to the "spirit" of the House Rules adopted pursuant to H. Res. 287 [see: H. Rule XLIII(2)].[46]

The House Select Committee on Ethics also found, in Advisory Opinion No. 11, May 11, 1977, that a Member may not accept proceeds for his unrestricted personal use from a fundraiser which is conducted by a group which is independent from the Member. The Committee states:

> A major thrust of the provisions contained in the new House Rules was to severely limit the potential for Members of Congress to use their positions of influence for personal gain. In this context, therefore, it is irrelevant whether the Member himself solicits these funds, or whether the Member accepts funds for personal use that are solicited on his behalf by an independent committee.

The House Committee on Standards of Official Conduct, it should be noted, has given informal opinions to the effect that money raised through fundraisers may be used as a Member's "legal defense fund" to pay legal expenses arising out of the performance of official duties or one's campaign and election. This use of funds would be considered "campaign related" and not a personal use of the funds. Since the funds raised by the fundraiser are still considered campaign contributions, they are under all the restrictions and prohibitions of other campaign contributions, including the reporting requirements, contribution limitations and prohibitions on corporate, labor union and Government contractor contributions, among other restrictions.

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[46] Advisory Opinion No. 4, April 6, 1977.

Appearances of Influence. In addition to specific prohibitions on amounts and sources of gifts, a general ethical standard recognized by the House notes that Members and employees should not accept favors or benefits for themselves or their families "under circumstances which might be construed by reasonble persons as influencing the performance of [their] governmental duties." [47] This rule would apparently take into consideration the nature of the gift or benefit as to possible conflicts of interest with the official duties of the employee or Member, as well as the source and amount of the gift as to possible influences upon the employee or Member and favoritism towards the donor.[48] This standard of conduct would thus encompass the general ethical principles discussed above concerning the receipt of gifts in general and would require caution and discretion by a Member and an employee of the House in accepting any gift, favor, or benefit which would not have been offered "but for" the individual's position in Congress.

Bribery. When gifts, money, or other things of value are received by a public official, such as a Member or an employee of the House, in return for being influenced in the performance of official duties, or for or because of any official act done by him, then a violation of the Federal bribery statute may be present. There are two applicable clauses within the bribery statute which specifically prohibit Federal officials from "corruptly" receiving or asking for "anything of value for himself or for any other person or entity, in return for being influenced in his performance of any official act", at 18 U.S.C. § 201(c); and from receiving "otherwise as provided by law" anything of value "for or because of any official act performed or to be performed by him," at 18 U.S.C. § 201(g). The distinguishing features of the "bribery" section (§ 201(c)), and the "illegal gratuity" section of § 201(g) were discussed by the United States Court of Appeals for the District of Columbia:

> The bribery section makes necessary an explicit quid pro quo which need not exist if only an illegal gratuity is involved; the briber is the mover or producer of the official act, but the official act for which the gratuity is given might have been done without the gratuity, although the gratuity was produced because of the official act.[49]

The two applicable clauses within the bribery statute both require as an element of the offense that the thing of value received or solicited by the official be related in some manner to an official act done or to be done by the officer or employee, that is, either "in return for being influenced in", or "for or because of", an official act. This element of the two offenses, that the thing of value received relate to some official act, distinguishes the "bribe" of subsection (c) or the "illegal gratuity" of subsection (g) from a mere "gift" which, as generally defined, is a "voluntary transfer of personal property * * * made gratuitously, and not upon any consider-

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[47] 72 Stat., part 2, p. B. 12, paragraph 5; note H. Rpt. No. 94-1364, 94th Congress, 2d Session.

[48] See House Rpt. No. 96-930, supra at pp. 19-20 re Statement of Alleged Violations and pp. 4-5, Rationale and Votes. See also House Report No. 96-856, 96th Congress, 2d Session, *In the matter of Representative Daniel J. Flood*, March 26, 1980, pp. 5-16, re Statement of Alleged Violations.

[49] *United States* v. *Brewster*, 506 F.2d 62, 72 (1974).

ation * * *." [50] The receipt of a gift by a Member, therefore, as opposed to a bribe or an illegal gratuity, would not have been received with the requisite connection or relation to any official act done or to be done by the Member.[51]

Somewhat akin to the bribery statute at 18 U.S.C. § 201 is a prohibition at 18 U.S.C. § 203 which works to prohibit House Members and employees from receiving anything of value as compensation for "services rendered" anyone before a Federal agency, department, or bureau. Thus, even if the acts before the Government agency were proper or within the official capacity of the Member or employee, the offense would arise in the receipt of compensation, other than one's congressional salary, for such acts.[52] A statutory provision at 18 U.S.C. § 211 specifically prohibits the receipt of things of value for supporting someone for, or using one's influence in obtaining someone a Federal job. Thus, caution should be exercised in the receipt of gifts, favors, contributions or entertainment from persons whom the Member or his staff has assisted with job applications or other dealings with the agencies of the Federal Government.

Disciplinary actions in the 96th and 97th Congresses which were based upon findings, allegations, or convictions concerning bribery, illegal gratuities and/or the receipt of money for exercising one's influence in Congress, resulted in the expulsion of one Member of Congress,[53] and the initiation of disciplinary proceedings against three others which were eventually discontinued because of the resignation of the Members involved.[54]

Financial Disclosure. Under legislation entitled the "Ethics in Government Act of 1978", P.L. 95-521, Members of the House, employees of the House earning a salary of a GS-16 or more, and at least one principal assistant to a Member if no one on the Member's staff has a salary of a GS-16 or more, must disclose in annual financial statements the source and amount of gifts aggregating over $100 from a single source; and gifts of transportation, lodging, food or entertainment aggregating $250 or more from a single source.[55] Additional information on certain gifts received by the spouse or dependent of the Member or covered employee may also need to be filed.[56] Additionally, as noted above, tangible gifts of over minimal value which may be received from foreign governments must be disclosed at the time such gifts are required to be turned over to the United States, that is, within 60 days after receipt; and gifts of travel or expenses for travel, from foreign governments must be disclosed and reported within 30 days of receipt.[57]

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[50] *Black's Law Dictionary*, 4th Ed., p. 817.

[51] *United States* v. *Brewster*, supra.

[52] *May* v. *United States*, 175 F.2d 994 (1949).

[53] See House Report No. 96-1387, 96th Congress, 2d Session, *In the Matter of Representative Michael J. Myers*, September 24, 1980, pp. 3-5; *Congressional Record*, Oct. 2, 1980, H10289-H10309 (daily ed.).

[54] House Report 96-856, supra; House Report No. 96-1537, 96th Congress, 2d Session. *In the Matter of Representative John W. Jenrette, Jr.;* House Report No. 97-110, 97th Congress, 1st Session, *In The Matter of Representative Raymond F. Lederer.*

[55] Public Law 95-521, Sec. 102(a)(2), 2 U.S.C. § 702(a)(2).

[56] Public Law 95-521, Sec. 102(d)(1)(B) and (c), 2 U.S.C. § 702(d)(1).

[57] House Committee on Standards of Official Conduct Regulations pertaining to receipt of foreign gifts, supra.

Chapter 7. OUTSIDE EMPLOYMENT AND COMPENSATION OF MEMBERS

Highlight

Generally, regulations, rules and opinions concerning outside compensation or employment of Members are concerned with potential conflicts of interest; potential influences on the Member's official conduct; the possible distraction from the time and attention which a Member is expected to devote to his official congressional responsibilities; and the possible appearance that a Member is "cashing in" on his position in the Congress.

Specifically, as to outside employment and compensation, a Member of the House may not:

—earn more than 30% of a Member's annual congressional salary in outside earned income in a calendar year;

—accept an honorarium of more than $2,000 for one appearance, speech or article, or more than a total of 30% of a Member's congressional salary in honoraria or other earned income in one year; and may not accept honoraria in excess of the customary amount for a particular appearance, article, or speech;

—use one's official position in Congress as a means for making personal gains;

—receive compensation for services rendered by himself or by anyone else before Federal agencies or departments;

—contract directly or indirectly with the Federal Government;

—particiate in "self-dealings" with a private foundation without incurring specific tax penalties;

—receive "emoluments", or compensation, of any kind from a foreign government.

House Rules, ethical standards, and statutory provisions work to greatly restrict the private practice of law by Members of the House, particularly the continued affiliation with a law firm, although the practice of law by House Members and a Member's affiliation with a firm are not strictly prohibited.

Members of the House are required to file annual financial disclosure statements detailing specific information on certain income received, in addition to other financial information required to be disclosed.

Chapter 7. OUTSIDE EMPLOYMENT AND COMPENSATION OF MEMBERS

The discussion of the regulations governing outside employment and compensation of Members of the House relates generally to personal services by the Member and the receipt of what is commonly referred to as "earned" income, that is, compensation received for personal services and employment, as opposed to income from investments or other financial assets.

Members of the House of Representatives are under numerous restrictions concerning their permissible outside employment and the receipt of outside earned income. These restrictions are generally addressed to various problems which may arise because of a Member's private employment, that is, a possibility of a conflict between the narrow interests of a private employer and the broader interests of the general public; possible influences upon the judgment of a Member in performing his official duties because of employment with and the receipt of compensation from a private source; a possible distraction from the time and attention to which the Member, as a full-time legislator, is expected to devote to his congressional duties; and the appearance of impropriety which might occur in the eyes of the public to the effect that the Member is "cashing in" on his position of influence in receiving additional income and compensation from private sources.

A general ethical principle in the House of Representatives is that a Member should not use the prestige and influence of his position in Congress for his own personal gain. In attempting to realize this principle, and to deal with the problems which may arise in relation to conflicts of interest and "time" conflicts, the House of Representatives has adopted various standards of conduct in addition to the statutory restraints on outside employment and income. Most significantly, the Rules of the House limit the total amount of outside earned income which a Member may receive in a year. Under the present rules of the House, a Member may not receive more than a total of 30 percent of his congressional salary in earned income from all outside employment in any calendar year.[1]

The House Commission on Administrative Review of the 95th Congress, which recommended the changes in the House Rules adopting the original earned income limitation, noted basic reasons for focusing on and restricting earned income from outside employment activities of a Member, rather than income from assets or investments:

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[1] Rules of the House of Representatives, Rule XLVII. as amended by H. Res. 305, 97th Cong. See P.L. 98-63, section 908, making permanent law the 30% limitation on honoraria, effective January 1, 1984.

> Earned income creates a variety of more serious potential conflicts of interest than does investment income, ranging from overt attempts to curry favor by private groups to subtle distortions in the judgment of Members on particular issues. * * * The Member who has stock holdings can transfer his holdings at any time to another company, and thus, is not subject to the same degrees of potential conflict as a Member whose * * * salary [from a private company] could be cut off arbitrarily.
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> Outside earned income also presents a "time conflict" between the Member's private interest and the public interest. Supplementing salary with outside earned income can detract from a Member's full-time attention to his official duties and creates subtle distortions in judgment as how Members should use their time. * * *
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> Moreover, many citizens perceive outside earned income as providing Members with an opportunity to "cash in'" on the positions of influence. Even if there is no actual impropriety, such sources of income give the appearance of impropriety and, in so doing, further undermine public confidence and trust in government officials.[2]

In addition to the limit on overall earned income and the rules barring the use of one's official position for personal gain, Members of the House are restricted in particular areas of outside employment and compensation. For example, Members of Congress are prohibited from receiving compensation for services rendered before Federal agencies; are prohibited from contracting with the Federal Government; are restricted in their "self-dealings" with private foundations; are prohibited from receiving any compensation from foreign governments; are limited in the amount of honoraria they may accept; are restricted in some areas of the practice of law; and are required to make annual financial disclosure statements with respect to income and compensation received, among other items of financial information.

Outside Employment and Official Activities. There is no statutory provision or Rule of the House which states a specific prohibition against a Member of the House engaging in outside private employment which "conflicts" with or is "inconsistent" with the Member's official duties. Conflicting or inconsistent private employment might occur when, for example, the interests of a private employer or client are at odds with the interests of the general public on a particular matter, or where specific matters involved in private outside employment would be before the Member in an official congressional capacity. It may be noted that conflicting or inconsistent outside employment for compensation by Members of the Senate is specifically prohibited by the Standing Rules of the Senate.[3]

Although no rule in the House specifically prohibits Members from engaging in conflicting outside employment, ethical standards

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[2] House Document No. 95–73, 95th Congress, 1st Session, "Financial Ethics", Communication from the Chairman, Commission on Administrative Review, U.S. House of Representatives, p. 10.

[3] Standing Rules of the Senate, Rule XLV(2).

and rules restrict Members in certain aspects of outside employment, that is, in the relationship between the Member's receipt of outside compensation, benefits or employment and the Member's performance of official congressional duties and responsibilities. The "Code of Ethics for Government Service",[4] in addition to stating generally that a "public office is a public trust",[5] specifically provides that a Member should never accept "benefits under circumstances which might be construed by reasonable persons as influencing the performance of his governmental duties".[6] The provisions of the Code of Ethics would therefore look to the relationship between the receipt of compensation or other benefits from a private source and the official functions of a Member of the House as to appearances of possible improprieties, undue influences, or breaches of the public trust.

Thus, for example, if a Member seeks benefits from an organization or firm when the Member, in his official congressional capacity, had actively promoted the establishment of that organization, then a possible violation of this provision barring appearances of influence might occur.[7] Additionally, if the Member sponsors legislation which specifically deals with and affects a specific organization or interest from which the Member is receiving compensation or other benefits, then there may exist a possible violation of the ethical principles embodied in the Code of Ethics for Government Service which, as discussed by the House Committee on Standards of Official Conduct, work to "prohibit conflicts of interest and the use of official position for any personal benefit".[8]

Members of the House are further instructed by the House Rules, at Rule XLIII(3), not to receive any compensation or allow any compensation to accrue to one's beneficial interest from any source, the receipt of which would occur by virtue of influence improperly exerted from the Member's position in the Congress. This provision would again necessitate an examination into the circumstances surrounding the receipt of outside compensation and the relationship of that receipt to official acts or influences exerted by the Member to determine, as noted in the debate preceding the adoption of this rule in 1968, if a Member has "used his political influence, the influence of his position as a Member, to make pecuniary gains".[9] Finally, along similar lines, Members of the House are prohibited from using confidential information received in the performance of their official duties as a means for making private profit.[10]

Earned Income Limitation. The House of Representatives adopted House Rule XLVII on March 2, 1977 (H. Res. 287, 95th Congress,

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[4] 72 Stat., part 2, B12 (1958), H. Con. Res. 175, 85th Congress; see House Rpt. No. 94-1364 as to continuing applicability of ethical standards.

[5] Id. at para. 10.

[6] Id. at para. 5.

[7] See: House Report No. 94-1364, 94th Congress, 2d Session, *In the Matter of a Complaint Against Representative Robert L. F. Sikes*, Report by the Committee on Standards of Official Conduct, pp. 3-4.

[8] Id. at p. 4.

[9] *Congressional Record*, April 3, 1968, p. 8807, comments by Representative Price.

[10] Code of Ethics for Government Service, supra at para. 8; see 7 U.S.C. § 13(e) as to use of inside information from the Commodity Futures Trading Commission; and 50 App. U.S.C. § 2160(f), as to the use of any confidential information received by virtue of public position in speculating in any commodity exchange.

1st Session), amended on December 15, 1981 (H. Res. 305, 97th Congress, 1st Session), which places restrictions upon the outside earned income of Members of the House. This provision currently limits the amount of aggregate outside earned income (including honoraria) which a Member may receive in a calendar year to 30% of the Member's yearly congressional salary.

The limitation in this Rule applies to income earned for personal services, rather than moneys received from ownerships or other investments of equity. As discussed in the floor debate on this Rule, "[t]he determination is whether one earned it by the sweat of his brow, in which case it would be earned income, or because of ownership" in a firm or business which would not be within the limitation.[11] In an advisory opinion of the House Select Committee on Ethics in the 95th Congress, the Committee emphasized that the facts of a particular case would control as to whether moneys received were earned income, rather than any characterization of such moneys. That is, money received for personal services, earned income, "by any other name", would still be earned income for purposes of the Rule. As stated by the Committee:

> [T]he label or characterization placed on a transaction, arrangement or payment by the parties may be disregarded for purposes of the Rule. Thus, if the amounts received or to be received by a Member are in fact attributable to any significant extent to services rendered by the Member, the characterization of such amounts as partnership distributive share, dividends, rent, interest, payment for a capital asset, or the like, will not serve to prevent the application of Rule XLVII to such amounts.[12]

In personal service businesses where capital is not a material income producing factor, such as in the practice of one's profession as a doctor, lawyer, insurance broker, or real estate agent, the House Select Committee on Ethics noted that the entire share of the profits for the Member will generally be considered earned income, unless it can be shown that some income actually derives from a return on an investment.[13] Even where the Member performs no personal services, it will be presumed, absent a strong showing to the contrary, that his share of the profits from a service business is for attracting or retaining clients, and thus earned income.[14] As to law practices specifically, the Select Committee noted that "buy-out" arrangements are permitted and will not be counted toward the earned income limit when fair and reasonable in relation to comparable practices.[15] If a Member does retain an interest in a law firm, the Member "may treat as unearned income a portion of his share of the profits from the law firm, as from any other personal service business, equal to interest computed at 10 percent per annum on his investment in the business assets."[16]

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[11] *Congressional Record*, March 2, 1977, H 1582 (daily ed.), comments by Mr. Frenzel.
[12] House Select Committee on Ethics, 95th Congress, Advisory Opinion No. 13. See: Final Report of House Select Committee on Ethics, H. Rept. No. 95-1837, p. 82.
[13] Id.
[14] Id. at p. 83.
[15] Id.
[16] Id.

In business corporations, only consideration to the Member for services performed will be considered earned income, and an increase in the value of the firm's stock or profits distributed will not be considered earned income for the Rule.[17] This, however, cannot be used as a subterfuge to have compensation for a Member's personal services directed to a corporation and then distributed to the Member as "profits", such as where a Member would incorporate for purposes of making speeches or writing articles and have all fees directed to the corporation which then in turn distributes "profits" and "dividends" to the Member.[18]

As for close corporations, partnerships and unincorporated businesses, where a Member has an ownership interest and also performs some services, some of the profit realized from the business might result from the personal services of the Member and therefore would be considered earned income. As noted by the Select Committee, "the determining factor is whether the Member's personal services generate significant income for the business." [19] The Member may protect his interest and investments in the business through general oversight and management of his investments without generating earned income. However, fees, compensation, or salaries from such a business are earned income, and where the Member's principal function is to refer clients or help retain clients, then "the Member would be deemed to be rendering income-producing services, even though the actual time involved might be minimal." [20]

The rules on income-producing services for a business in which the Member has an ownership interest would also apply generally to a family business or farm.[21] As provided in Rule XLVII, the term "outside earned income" means "wages, salaries, professional fees, honorariums, and other amounts (other than copyright royalties) received or to be received as compensation for personal services actually rendered", but, however, does not include (1) the Member's congressional salary; (2) compensation from services rendered prior to becoming a Member or before the effective date of this rule; (3) amounts received from a qualified pension, profit-sharing, or stock bonus plan; and (4) in the case of a family controlled business or farm, amounts received in connection with protecting or managing one's investment as long as the personal services rendered by a Member do not in themselves generate a significant amount of income.

The Commission on Administrative Review in the 95th Congress offered an explanation concerning the family business or farm exemption from the personal earned income limitation:

> In interpreting what constitutes earned income for personal services, the Commission believes that Members should be able to render personal services to manage or protect their equity in a family trade or business without having to allocate these personal services toward the 15-

[17] Id.
[18] Id.
[19] Id. at p. 85.
[20] Id.
[21] Id.

> percent limitation. However, if the personal services, in and of themselves, generate any significant amount of income, the resulting income should be subject to the 15-percent limitation. Conversely, the Commission believes that in implementing this limitation care should be taken to prevent Members from circumventing it by incorporating themselves into a "family business" and then withdrawing what in reality are fees for personal services in the form of dividends or profits.[22]

Similarly, as discussed in the debate preceding the adoption of this Rule, personal services which generate income will not come within this exemption and would thus be subject to the 30 percent limit:

> The crucial element in determining whether the limitation applies * * * is this: If the personal services produce the income, then it does not matter whether it is a family business or whether it is not a family business or whether it is a law firm, or anything else. If those personal services actually produce the income, then it comes under the limitation.
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> On the other hand, if the Member is merely acting to protect his investment, to protect his equity, to protect his capital, then it is not services rendered to produce income; and that income is not subject to the limitation.[23]

Additionally, the Select Committee stated the following with respect to the "family business" exemption in the rule:

> The definition of earned income in Rule XLVII, which excludes amounts received by a Member from a family controlled business "so long as the personal services actually rendered by the Member . . . do not generate a significant amount of income," [24] was simply intended to assure Members that they could continue to make decisions and take actions necessary to manage or protect their equity in a family trade or business, and would not be forced to divest themselves of their family business interests. As with any business, a Member would not be required to allocate his share of the profits of the business as outside earned income when the facts and circumstances show that the income is in reality a return on investment.[25]

Income generally comes within the limitation for that year and that time when the Member earns it, that is, "when the Member's right to receive it becomes certain".[26] A Member may therefore not earn income and have it deferred to another year or to when he leaves Congress to avoid the income limitation. As for honoraria, however, House Rule XLVII, Clause 2, as amended by H. Res. 305, 97th Congress, 1st Session, provides that honoraria shall, for

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[22] House Document No. 95-73 supra at p. 11.
[23] *Congressional Record*, March 2, 1977, H1577 (daily ed.), comments by Representative Hamilton; see also H. 1631 comments by Representative Obey.
[24] House Rule XLVII.
[25] See H. Rpt. No. 95-1837, supra, at p. 85.
[26] See: H. Rpt. No. 95-1837, supra at p. 81.

purposes of the earned income limitation, be counted toward the yearly limit for the year in which the honorarium was received, rather than earned. The receipt of honoraria may therefore apparently be deferred to a year in which the Member has not reached the earned income limit or until the Member leaves congressional office. A similar treatment of honoraria is provided by statute at 2 U.S.C. § 441i(d), and in the 30% honoraria limitation enacted into law by P.L. 98–63, section 908 (see section 908(b)(3)).

Honoraria earned and assigned to a charity will not count toward the overall earned income limit of House Rule XLVII, nor toward the 30% honoraria limit enacted in P.L 98–63 (effective January 1, 1984). As to the assignment of honoraria to charity and the 30% earned income limit of House Rule XLVII, the Committee on Standards of Official Conduct noted in a "Dear Colleague" letter of March 28, 1983:

> Honoraria assigned to a tax-exempt charity is not treated as earned income subject to the limitations in the rule. If a Member chooses to have an honorarium or part thereof, donated to a specific tax-exempt charity selected by the Member, he may direct the paying organization to make the payment directly to the charity. Or, if he has already received it, he may return it to the payor or donate it to a charity directly.
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> Any honoraria assigned to a charitable organization should be reported in the Member's annual Financial Disclosure Statement required by the Ethics in Government Act of 1978, with the notation that the income was assigned to charity. It should also be noted that honoraria assigned to charity must be reported by the Member as gross income for tax purposes, and may be deducted as a charitable contribution.

Services Before Federal Agencies. Members of Congress are specifically prohibited by a Federal criminal statute at 18 U.S.C. § 203 from receiving compensation, directly or indirectly, for any "services rendered" in relation to any matter or proceeding in which the United States is a party or has an interest, before any Government agency, department or bureau. Thus, as discussed in the chapter dealing with communications to Federal agencies on behalf of constituents, a Member may not receive compensation or things of value, other than his congressional salary, for interceding, representing, or for other dealings with an administrative agency on behalf of a constituent or on behalf of any other person or organization. The terms of this statutory prohibition, although applicable to matters before "any department, agency, court-martial, officer, or any other civil, military, or naval commission", do not apply and were not intended to apply to matters or proceedings before a court of law.[27]

In interpreting this provision Federal court cases have found that even if the acts of a Member in contacting a Federal agency

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[27] Compare 18 U.S.C. § 203 with 18 U.S.C. § 205; see legislative history of provision, House Report No. 748, 87th Congress, 1st Session (to accompany H.R. 8140), p. 20; also Memorandum of Attorney General Regarding Conflict of Interest Provisions of Public Law 87–849, Feb. 1, 1963, 28 F.R. 985 (see 18 U.S.C. § 201, note).

on behalf of a private individual or organization were within the "scope of his official duties as a congressman", the gist of the offense is accepting additional compensation for such services rendered.[28] As to activities which might not be considered the requisite "services rendered" under the provision, a Federal District Court has found that mere inquiries by a Member of Congress concerning the status of a pending matter before a Federal bureau, without discussion of the merits of a case, did not constitute prohibited "services rendered" within the statutory framework.[29] If a Member is found in violation of this statutory provision for receiving compensation for services rendered to private individuals or groups before Federal agencies, it should be noted, the Member also may be liable for repayment of compensation unlawfully received under a theory of breach of fiduciary duty and trust by the Member. As held by a Federal court in finding a former Member of Congress liable for such repayment, a violation of section 203:

> unquestionably demonstrates a breach of trust, for in order to fall within its prohibition, a member of Congress must shed the duty of disinterested advocacy owed the government and his constituents in favor of championing private interests potentially inconsistent with this charge.[30]

The prohibition within section 203 extends to the receipt of compensation "directly or indirectly" for services before Federal agencies. Therefore, if a Member is in a partnership arrangement or otherwise shares in fees from services rendered before Federal agencies, a violation of this provision may occur even if the Member did not personally perform services before the agencies.[31] Although most relevant to Members who practice law, and therefore discussed in some detail in the section concerning congressional law practices, it should be noted here that the Department of Justice has stated in an informal letter opinion that section 203 "bars a partner in a law firm from sharing in any fees received by the firm before any Federal department or agency during the time he is or was a Federal employee."[32] Although such fee sharing or partnership arrangements concerning Federal agency practice would be prohibited, section 203 as interpreted by the Justice Department would apparently allow a Member to receive a fixed salary from a firm or organization which derives some revenue from Federal agency practice. The Justice Department letter cited above noted that "this Office has interpreted § 203 not to apply to a person who receives a fixed salary as an employee of a firm (as opposed to someone who shares in the firm's profits), even though some of the firm's overall income may be attributable to service covered by § 203."

Provisions of Federal law at 5 U.S.C. § 501, also provide that a firm, business, or organization which practices before the Federal

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[28] *May* v. *United States*, 175 F.2d 994 (1949).
[29] *United States* v. *Quinn*, 141 F. Supp. 622 (D.N.Y. 1956).
[30] *United States* v. *Podell*, 436 F. Supp. 1039 (1977), *aff'd* 572 F.2d 31 (2d Cir. 1978). See also *United States* v. *Eilberg*, 507 F. Supp. 267 (E.D. Pa. 1980).
[31] See: House Committee on Standards of Official Conduct, Advisory Opinion No. 1, January 26, 1970.
[32] Letter of March 14, 1978, from Leon Ulman, Deputy Assistant Attorney General, Office of Legal Counsel, Department of Justice.

Government may not use the name of a Member of Congress to advertise the business. As for dealings in general with the Government, ethical standards adopted in the Code of Ethics for Government Service state that all officers of the Government, including Members, may not engage in any business with the Government, either directly or indirectly, "which is inconsistent with the conscientious performance of his governmental duties." Finally, as discussed below, a Member of Congress may not contract with the Federal Government, or receive benefits arising from a Government contract.

Contracting With the Federal Government. A Federal criminal prohibition, at 18 U.S.C. § 431, provides a penalty for any Member of Congress who "undertakes, executes, holds or enjoys" a contract or agreement entered into with the United States. Further, a Federal statute at 41 U.S.C. § 22, requires that all Government contracts contain a clause providing that no Member of Congress may share in the benefits arising from such contract. In addition to the prohibition on a Member contracting with the Government, 18 U.S.C. § 432 penalizes any officer or employee of the United States who "makes or enters into any contract, bargain or agreement" with a Member of Congress on behalf of the United States.

The statute provides that a Member may not "directly or indirectly" hold, execute, undertake, or enjoy "in whole or in part" any contract with the Government. No specific interpretation of the terms, "directly or indirectly" was found as to their specific intent concerning the requisite relationship of a Member to the benefits of a Government contract for a violation to occur. An opinion of the Attorney General found, however, that a partnership, of which a Member of Congress is a member, is prohibited from entering into a contract with the Federal Government.[33] There are no definitive rulings as to whether a Member of Congress may receive compensation as an employee rather than a partner from a firm or organization holding a Government contract, although some state decisions in this area have found that such a connection to and benefit arising from a government contract would be prohibited a legislator.[34] Further, although section 431 is a criminal statute and thus must be interpreted narrowly, a Member of Congress receiving compensation or fees from an organization's or firm's Government contract either as a salary, honorarium, or subcontract, might be considered to be benefiting from that Federal contract in violation of the standards expressed in 41 U.S.C sec. 22, even if arguably not committing an indictable criminal offense under 18 U.S.C. § 431. The provisions of public contract law at title 41 are apparently only "directory" in nature.[35] However, they arguably establish a standard of conduct to be observed by Members of the House.

One relationship of a Member of Congress to a Government contract has been specifically exempt from the statutory prohibition, that is, any contract made, entered into, or accepted by an incorpo-

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[33] 4 Op. Atty Gen. 47 (1842).
[34] See: 47 Virginia Law Review 1034, 1050–1051 (1961).
[35] *United States* v. *Certain Land Situated in St. Charles County, Mo.*, 46 F. Supp. 1921 (D.C. Mo. 19042), *reversed* 139 F.2d 661, *reversed* 324 U.S. 49.

rated company for the general benefit of the corporation. Thus, under 18 U.S.C. § 433 a Member of Congress may apparently be a stockholder, even a principal stockholder, or an officer of a corporation which holds a Government contract without a violation of the statutory provision at 18 U.S.C. §431. It would appear that the exception for contracts with corporations contained in the criminal provision at 18 U.S.C. § 433 would likewise apply to the contract law provisions at title 41 U.S.C. § 22. The provision in title 41 and the criminal provisions discussed, and the exceptions to them, were all originally passed as part of the same Act,[36] thus suggesting that the exceptions from that Act for corporate contracts were intended to apply to the provision now codified at title 41.

The benefit which accrues to a Member of Congress from a Government contract because a Member is a shareholder or officer of the corporation has been specifically exempt from the statutory prohibition since the inception of this provision. As noted in an Opinion of the Attorney General as to provisions of the former Criminal Code at Section 114, 115, and 116 (now codified at 18 U.S.C. 431, 432, and 433), concerning a "substantial" stock interest of a United States Senator in an incorporated cattle company which secured Federal agency loans to cattle finance companies:

> The provision of section 116, specifically excepting from the operations of sections 114 and 115 contracts made, entered into, or accepted by any incorporated company, where such contract or agreement is made for the benefit of such incorporation or company, has been an integral part of this legislation since its original enactment * * * and is entirely clear in its provisions.[37]

A later opinion of the Attorney General dealt with a Government contract to a firm in which the Member of Congress not only held 30 percent of the outstanding stock, but of which the Member was also president, "and presumably, therefore, the active head." [38] In this opinion, the Attorney General found that the exemption applies in such a case since Congress had not qualified the exemption on corporate contracts and had made "no distinction between corporations whose officers are Members of Congress and those whose officers are not such Members, nor does [the statute] distinguish between corporations in which Members of the Congress hold a substantial interest in the capital stock and those in which they do not hold such interest." [39]

The Attorney General in this opinion noted that although "It may be that at the time of [the statute's] enactment the Congress did not contemplate the present widespread use of the corporate form and therefore did not have in mind situations such as the one now presented", nevertheless the Congress had reenacted and amended those provisions a number of times, extending and enlarging the exemptions contained in them, and therefore apparently "acquiesced" in the "construction placed thereon by the Attorneys General and the Courts * * *." [40] It was recognized by the Attor-

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[36] Revised Statutes §§ 3739-3741, April 21, 1808, 2 Stat. 484, C. 48.
[37] 33 Op. Atty. Gen. 44, 48, October 29, 1921.
[38] Op Atty. Gen. 165, 167, May 19, 1938.
[39] Id. at 167-168.
[40] Id. at 170.

ney General, however, that the possibility for abuse exists within this exemption. Further, the question of whether the act of incorporation for the obvious purpose of circumventing the statute's prohibition would give rise to a cause of action under these provisions, and justify a "piercing of the corporate veil", was left open by the Attorney General.[41]

In addition to exempting contracts made with a corporation from the prohibition of a Member contracting with the Government, the statutory provision at 18 U.S.C. § 433 also specifically provides that the prohibition will not apply to contracts, loans or other agreements made or entered into under:

> The Reconstruction Finance Corporation Act, the Agricultural Adjustment Act, the Federal Farm Loan Act, the Emergency Farm Mortgage Act of 1933, the Farm Credit Act of 1933, or the Home Owners Loan Act of 1933, the Farmers' Home Administration Act of 1946, the Bankhead-Jones Farm Tenant Act, or to crop insurance agreements or contracts or agreements of a kind which the Secretary of Agriculture may enter into with farmers.

Other statutory provisions of Federal law specifically note that the requirement of excluding Members of Congress from benefits arising from a Federal contract, stated at 41 U.S.C. § 22, is applicable to the acquisition of land by the Government under flood control policies and procedures,[42] but is not applicable to contracts entered into under the United States Information and Educational Exchange Program.[43]

Private Foundations. Tax penalties may arise if Members of the House engage in acts of "self-dealing" with a "private foundation". Provisions of the Internal Revenue Code at 26 U.S.C. § 4941 prohibit certain dealings, such as those involving the receipt of compensation or certain expenses, with a "private foundation" by some government officials, including elected officials in the legislative branch. The tax sanctions include an imposition of an excise tax on both the self-dealer and the manager of the foundation, which increase in size if the original matter is not rectified within a certain time, or for repeated or willful and flagrant violations.

Foreign Governments. Members of the House are prohibited, as are other Federal officials and employees, by the United States Constitution at Article I, Section 9, clause 8, from receiving an "emolument" of "any kind whatever" from a foreign government or a representative of a foreign state, without the consent of the Congress. An "emolument" is generally defined as "any profit, gain, or compensation received for services rendered." [44]

This provision was introduced during the debates of the Constitutional Convention in August of 1787 by Mr. Pinckney of South Carolina. As noted in *Elliot's Debates:* "Mr. Pinckney urged the necessity of preserving foreign ministers, and other officers of the United States, independent of external influence," and introduced this provision which passed without objection.[45]

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[41] Id. at 170–171.
[42] 33 U.S.C. § 702m.
[43] 22 U.S.C. § 1472.
[44] Comp. Gen. 819, 820 (1970); B–180472, March 4, 1974; B–180472, May 9, 1974.
[45] *Elliot's Debates,* Volume V, p. 467.

The general principle behind this constitutional prohibition was stated briefly by Justice Joseph Story in his historic work, *Commentaries on the Constitution of the United States:* "The other clause, as to the acceptance of any emoluments, title, or office, from foreign governments, is founded in a just jealousy of foreign influence of every sort."[46] As noted by the Comptroller General, "it seems clear from the wording of the constitutional provision that the drafters intended the prohibition to have the broadest possible scope and applicability."[47]

Thus, congressional consent, generally in the form of private or public bills, would be required before an honorarium or other income or compensation may be accepted by a Member of Congress from foreign governments, or organizations or persons representing or acting as an instrumentality of a foreign state. Under this provision, for example, the Comptroller General has found that transportation, or expenses for travel, given a Member of Congress by a foreign government, if gratuitously given, would constitute a gift to that Member and fall within the regulations promulgated on the receipt of foreign gifts. However, if such transportation or expenses for travel were offered a Member by a foreign government in return for and in connection with some service which the Member has provided or will be performing, such as a speech, article or appearance, then such travel or expenses may constitute "compensation" and thus an "emolument" to the Member.[48] Although Congress has consented by statute to the acceptance of certain "gifts" or "decorations" of minimal value, and other gifts under special circumstances, from foreign governments by Federal officers and employees, no such general consent for the receipt of emoluments or other compensation from foreign governments was granted by Congress to present Federal officials or employees under the provisions of the Foreign Gifts and Decorations Act or any other statute.[49]

Members of Congress are therefore prohibited from receiving any payment for their services rendered to official foreign interests, such as from ambassadors, embassies or agencies of a foreign government, or apparently from multinational organizations made up of foreign governmental units.[50] Members should thus be cautious in accepting expenses or other compensation from foreign foundations or other foreign organizations which receive support from a foreign government, or have such a relationship to the foreign government through sponsorship, funding or licensing to be considered an official arm or an instrumentality of that government. It should be noted that the Comptroller General of the United States has ruled, for example, that a Member of Congress could not accept a fee from the British Broadcasting Corporation for participation in a television program to discuss the American Presidency since the

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[46] Story, *Commentaries on the Constitution of the United States*, Vol. III, p. 215–216.
[47] 49 Comp. Gen. 820 (1970).
[48] Opinion of the Comptroller General, B–180472, May 9, 1974.
[49] 5 U.S.C. § 7342, as amended by P.L. 95–105; see, however, P.L. 95–105, Section 509 (37 U.S.C. § 801, note) as to employment of retired military members and members of the reserve by foreign governments.
[50] Note E.O. 11446, January 16, 1969, concerning decorations from multi-national organizations; 5 U.S.C. § 7342(a)(2), as amended by P.L. 95–105, concerning gifts from multinational organizations.

BBC, because of its funding relationship and regulation by the British Government, would be considered an instrumentality of the British Government and thus a "foreign state" under the constitutional ban.[51]

Honorarium Restrictions. Members of the House are generally permitted to accept honoraria for their personal appearances, articles, speeches and similar services. Provisions of the House Rules and Federal statutes, however, restrict the amount of an honoraria which may be accepted by a Member for a single event, and as an aggregate in one calendar year.

Federal law now controls as to the amount of an honorarium a Member may receive for any speech, appearance, or article.[52] The "per event" limitation established by statute is now $2,000, excluding related transportation, food and lodging expenses for the Member and an aide or spouse, and amounts incurred for agents' fees or commissions.[53]

The overall limitation on outside earned income within House Rule XLVII, which limits the additional income a Member may earn in a calendar year to 30% of his or her congressional salary, includes honoraria within the meaning of "outside earned income".[54] It should be noted also that a yearly restriction specifically on honoraria has been enacted into law and is applicable to Members of both the House and the Senate after January 1, 1984.[55] This provision establishes a limit of 30% of a Member's annual congressional salary for aggregate honoraria received in a calendar year. However, since the House Rule specifically includes honoraria as outside earned income within the overall limit on Members' outside earnings, if a Member has any outside earned income other than honoraria, then the House Rule would work to limit the amount of honoraria that such a Member may receive to something less than 30% of the Member's congressional salary; that is, such a Member's permitted honoraria under the Rule would be limited to that amount, when added to the other outside earned income received in the year, which would equal 30% of the Member's congressional salary.

The definition of the term "honorarium" within the House Rule limiting outside earned income (House Rule XLVII) and within the law limiting the aggregate amount of honoraria which may be accepted yearly (P.L. 98–63, 97 Stat. 337), are substantially similar. The term "honorarium" is not specifically defined within the statute prohibiting excessive honoraria on a per event basis (2 U.S.C. § 441i). However, under the regulations of the Federal Election Commission, the agency authorized to promulgate regulations on this statute,[56] the term "honorarium" is defined to mean the payment of something of value "accepted as consideration for an appearance, speech, or article."[57] The regulations and the statute

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[51] Opinion of the Comptroller General, B–180472, March 4, 1974.
[52] 2 U.S.C. § 441i. House Rule XLVII which had limited honoraria to $1,000 per event was amended in 1981, H. Res. 305, 97th Congress, eliminating the per event limitation thus allowing the statute to control.
[53] 2 U.S.C. § 441i(a).
[54] House Rule XLVII, para. 3(d).
[55] P.L. 98–63, 97 Stat. 337 (July 30, 1983).
[56] See 2 U.S.C. § 437d, 438.
[57] 11 C.F.R. § 110.12(b).

also specifically note that an honorarium does not include payment for agents' fees or commissions, or payment or provision for actual travel or subsistence, "including transportation, accommodations, and meals for the officer or employee and spouse or an aide * * *."[58] The regulations further define the terms "appearance", "speech", and "article".[59]

The regulations of the Federal Election Commission additionally provide a description of what an "honorarium" is not. The regulations exclude from the definition of honorarium "an award", which is a gift in recognition for some religious, educational, scientific, civil, etc., achievement which is given by means of a selection process with established criteria, for which the recipient is not required to apply or to take any specific action in competition for the award, and which does not require the recipient to make a speech, appearance or to write an article as a condition for receiving the award.[60] Further, an honorarium does not include "a gift", which is described as "a voluntary conveyance of real or personal property which is made gratuitously, and is not supported by consideration, and is not made to serve in place of an honorarium or a contribution."[61] Also excluded and distinguished from an honorarium is "a stipend", defined as "payment for services on a continuing basis, including a salary or other compensation paid by news media for commentary on events * * *."[62]

In an advisory opinion by the Federal Election Commission, the Commission distinguished between an "honorarium" and a "stipend" by noting that money received by a Federal official "is considered an 'honorarium', regardless of whether it is offered gratuitously or as a fee, if it is accepted as consideration for an appearance, speech or article" and if such money is "accepted as a payment for a single event or transaction and under circumstances which do not imply a continuing compensatory relationship between the parties for similar services." A "stipend", on the other hand, would be money which "is accepted in the form of fixed or regular compensation intended as consideration for the rendering of services, e.g., a salary."[63]

Thus, money received by a Member or employee of the House for an award, a gift, a stipend, or as proceeds from the publication of a book,[64] is not considered to be an honorarium under the statutes and therefore would not be subject to this statutory limitation upon honoraria.

The "per event" statutory honorarium limitation now provides that an honorarium which is earned by a public official may be paid instead to a charitable organization and such payment will not be treated as an honorarium to the official for purposes of the statutory limitation; and this is also the case for the yearly aggre-

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[58] Id.
[59] Id.
[60] 11 C.F.R. § 110.12(c).
[61] Id.
[62] Id.
[63] AO 1975-46, 40 F.R. 57756, December 11, 1975 (note modification by 1976 amendments to F.E.C.A., 41 F.R. 46416, October 20, 1976).
[64] Federal Election Commission Advisory Opinion, AO-1975-77, 40 FR 51611, November 5, 1976; see also Congressional Record, daily ed., October 8, 1974, at page S 18526.

gate honoraria limit and the limit on outside earned income.[65] The Internal Revenue Service has ruled in Revenue Ruling 79-121 that when an honorarium is earned and then transferred to a charity, the honorarium is to be treated as "income" of the public official with an off-setting tax deduction taken for the charitable contribution.

It should be noted that the 1976 Amendments to the Federal Election Campaign Act (P.L. 94-283), specifically exempt money received as "honorariums" under 2 U.S.C. § 441i, from the definition of political "contributions".[66] Thus, honoraria received within the statutory limits, including "related expenses" which cover actual expenses (see: Regulations of F.E.C., 11 C.F.R. § 100.4(b)(10)), would not be considered political contributions to a Member/candidate,[67] and therefore would not incur the various statutory restrictions concerning the receipt of "political contributions."

In addition to the specific dollar limit on honoraria, House Rule XLIII, the "Code of Official Conduct", at paragraph 5, prohibits Members, officers, and employees of the House from receiving honoraria "in excess of the usual and customary value" for the services involved.

Moneys received as honoraria by Members of the House would be considered income or compensation to that Member, and therefore would incur the general restrictions on outside income and compensation by Members of Congress. Thus, moneys received as honoraria would be subject to ethical restrictions on the use of official position for personal gain, the earned income limitation on aggregate yearly earnings, the restrictions on contracting or enjoying a contract with the Federal Government, restrictions on self dealing with private foundations, and prohibitions on the receipt of compensation from foreign governments. Members of Congress should therefore be concerned with the identity of a sponsoring person, group or organization and the source of its funds, in the acceptance of honoraria for speeches, articles or appearances.

Practice of Law. The practice of law by Members of Congress may raise ethical and conflict of interest problems beyond those involved in other outside employment undertakings. Because of the loyalty and trust owed a client by an attorney,[68] the conflict of interest problem of "serving two masters" may be particularly relevant in a congressional law practice when the narrow private interests of a specific client of the Member are inconsistent with the broader public interests of the Member's constituency or the nation. It has been argued that Members of Congress who engage in the outside practice of law are susceptible to being influenced in the performance of their official duties in Congress to favor the interests of important and lucrative private clients, and voting records have been offered to arguably support this contention.[69]

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[65] 2 U.S.C. § 441i(b) as amended by P.L. 98-63, section 908(g), 97 Stat. 338; see also P.L. 98-63, section 908(c), and House Rule XLVII, "Dear Colleague" letter of March 28, 1983, from House Committee on Standards of Official Conduct.

[66] 2 U.S.C. § 431(e)(5)(I).

[67] Federal Election Commission Opinion Request, re AOR 1976-79, October 27, 1976.

[68] American Bar Association "Code of Professional Responsibility" (hereinafter referred to as ABA Code), Canon 5, Ethical Consideration 5-1.

[69] Drew Pearson and Jack Anderson, *The Case against Congress*, 1968, pp. 117-125.

When the interests of a private client are in fact inconsistent with the interests of the general public on a particular matter, the attorney/congressman may be in an ethical dilemma in choosing between the public interest for which he was elected to serve or the private interests which he is retained to represent. As to an attorney's loyalty to the interests of a private client, the American Bar Association's "Code of Professional Responsibility" states:

> The professional judgment of a lawyer should be exercised, within the bounds of the law, solely for the benefit of his client and free from compromising influences and loyalties. Neither his personal interests, the interests of other clients nor the desires of third persons should be permitted to dilute his loyalty to his client.[70]

The judgment of a Member of Congress in performing his official congressional duties concerning certain legislation or other matters, therefore, may be influenced by this required loyalty to the interests of a private client so as not to "compromise" those interests.

However, a Member of Congress at the same time owes a duty to represent the interests of the general public, rather than personal, private or special interests. As stated by the Congress: "Public office is a public trust", and thus a Member of Congress is expected to exercise his judgment on behalf of the beneficiaries of that trust, that is, the general public.[71] A Federal court has specifically noted that a particular criminal restriction on the practice of law by Members of Congress, barring compensated representation of a private client before the Government, is intended to protect against a "breach of trust" which occurs when a Member "shed[s] the duty of distinterested advocacy owed the goverment and his constituents in favor of championing private interests potentially inconsistent with this charge."[72]

Faced with such ethical questions and potential conflicts of interest, many Members of Congress have voluntarily refrained from the practice of law.[73] More significantly, the permissible practice of law by present Members of Congress has been limited by the adoption of new ethical rules and conduct standards in both Houses of Congress.

The Standing Rules of the Senate, it may be noted, now prohibit a Senator from affiliating with a firm or association for the practice of law, prohibit a Senator from allowing a firm to use his name, and permit a Senator to practice law as a sole practitioner only during nonofficial time.[74]

Members of the House are still permitted to practice law and to affiliate with law firms, but are restricted in the amount of income which may be earned from their outside practice (and all other outside earned income) to a total of 30% of their congressional salary in any year. This earned income limitation, and other statutory

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[70] See note 68.

[71] Code of Ethics for Government Service, 72 Stat. part II, B 12, paragraphs 10, 5; See H. Rpt. No. 95-1837 supra at p. 3.

[72] *United States* v. *Podell*, supra at p. 1042.

[73] *U.S. News and World Report* vol. 83, p. 39, "Putting a Lid on Lawyers in Congress," Sept. 12, 1977. Reportedly there were approximately 38 Members in the House practicing law in 1976.

[74] Senate Rule XLV (6).

and ethical restraints, will work to limit the private practice of law by Members of the House, and to limit the Member's continuing affiliation with a private law firm during his term of office.

Practice by Members—Certain statutory provisions restrict specific representations or practice by Members of the House. Thus, Members are specifically prohibited from practicing in the United States Claims court or the United States Court of Appeals for the Federal Circuit,[75] or from being employed as an attorney by contractors or charterers holding contracts under the Merchant Marine Act.[76]

As noted previously, Members are prohibited by a Federal criminal statute[77] from receiving any compensation, directly or indirectly, for services before Federal agencies rendered by themselves or any other person. Thus, Members may not receive compensation for legal practices before Federal regulatory agencies or departments, precluding the receipt of compensation for such practices as before the National Labor Relations Board, the Internal Revenue Service, the Federal Trade Commission, the Interstate Commerce Commission, the Federal Communication Commission, and other departments, agencies, and officers of the Federal Government. The statutory provision at 18 U.S.C. § 203, however, does not preclude the receipt of compensation for legal practice before a court of law, even when the United States is a party or is interested in the proceeding.[78] The prohibition within section 203, upon receiving compensation for any service rendered before a Federal agency, and other statutory and ethical provisions, bears directly on the propriety and efficacy of a Member of the House retaining his affiliation with and interest in a private law firm during his term of office.

Affiliation with firm—As to retaining an interest in a private law firm, it should be noted initially that the American Bar Association "Code of Professional Responsibility" has promulgated disciplinary rules on what have been called "facade" law practices. This would be where a member of the firm, a Member of Congress for example, actually does little or no practice in the firm but retains his name in the title, letterhead and announcements of the firm, often for purposes of prestige of the firm in attracting clients. The ethics of receiving compensation merely for the use of a Member's name by a law firm for prestige purposes, rather than for actual services performed, have been questioned by congressional sources. In addition to possibly misrepresenting a Member's actual participation in the activities of the firm, or misleading the public as to the firm's influence because of the Member's affiliation, such an arrangement may give the appearance that the Member is receiving compensation or benefits merely because of the influence and prestige of his position in Congress, rather than for any services performed.[79]

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[75] 18 U.S.C. § 204, as amended by P.L. 97-164, April 2, 1982, 96 Stat. 45.
[76] 46 U.S.C. § 1223(e).
[77] 18 U.S.C. § 203.
[78] See note 28.
[79] Report of a Subcommittee of the Committee on Labor and Public Welfare, United States Senate, "Ethical Standards in Government", Committee Print, 82d Congress, 1st Session, P. 25.

Even where no compensation is received by the Member for his affiliation with a firm, the American Bar Association has prohibited the "facade" of retaining a Member's name in the firm when the Member is not actively and regularly practicing as a member of the firm:

> A lawyer who assumes a judicial, legislative, or public executive or administrative post or office shall not permit his name to remain in the name of a law firm or to be used in the professional notices of the firm during any significant period in which he is not actively and regularly practicing law as a member of the firm, and during such period other members of the firm shall not use his name in the firm name or in professional notices of the firm.[80]

Additionally, Ethical Consideration 2-12 of the "Code of Professional Responsibility" states:

> A lawyer occupying a judicial, legislative, or public executive position who has the right to practice law concurrently may allow his name to remain on the name of the firm if he actively continues to practice law as a member thereof.

The continued affiliation of a Member with a law firm may therefore raise another dilemma for the Member. The Member, under ethical rules promulgated by the American Bar Association, must regularly and actively practice law with the firm to prevent the problems of the prohibited "facade" law practice. However, such time and attention to an outside law practice may create a "time" conflict with the Member's official position and duties in the Congress which is understood to be a full-time commitment by the Member, requiring a "Member's full-time attention to his official duties".[81]

In some instances the American Bar Association has noted that persons who are to serve in a governmental post temporarily may take a leave of absence from the firm and maintain their name in the firm. Thus, if a person intends to hold office only temporarily and then return to his position in the firm, his name may apparently be retained if he is not precluded from practice by law or regulation and "proper precautions are taken not to mislead the public as to his degree of participation in the firm's affairs".[82]

A Federal statutory provision, it should be noted, bars an individual firm, or corporation practicing before a Federal agency from using the name of a Member of Congress in "advertising" the business.[83] It appears, however, that the listing of an individual's name on the letterhead of a law firm's stationery and the inclusion of an individual's name in the name of a firm would not be "advertising" in violation of the statute as far as the term "advertising" is generally used in relation to attorneys.[84] The statutory provision, at 5

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[80] ABA Code, D R 2-102(B).
[81] H. Doc. 95-73, supra at p. 10; see also H. Rpt. No. 95-1837, supra at p. 29.
[82] A B A Opinion No. 318 (1967).
[83] 5 U.S.C. § 501.
[84] A B A Code, Cannon 2, E.C. 2-9, 2-10, and D R 2-101, 2-102.

U.S.C. § 501, was derived with little change from a 1916 provision which referred to "advertising" in the commercial sense and was specifically intended to prevent the practice of individuals or firms, particularly those practicing before the patent office, from soliciting complimentary statements from Members of Congress and then using such statements for the purpose of endorsing and advertising the individual's or firm's business.[85] However, even though participation by a Member of Congress or the retention of a Member's name in a legal partnership, firm, or corporation, which practices before Federal agencies may not technically violate 5 U.S.C. § 501, such an arrangement may encounter difficulties under Federal criminal law at 18 U.S.C. § 203.

Federal Practice by Partners, Firm—The statutory provision at 18 U.S.C. § 203, which, as discussed above, prohibits a Member of Congress from receiving compensation for services rendered before a Federal agency, department or commission, also prohibits a Member from directly or indirectly receiving compensation for services rendered by himself or another before such bodies. Thus, if a Member of Congress has an arrangement with a partner or legal firm where compensation for activities by partners or the firm would accrue to the Member of Congress as a participating partner or member of the firm, such an arrangement, where compensation accrues to the Member of Congress for services by the firm before a Federal agency, may be in violation of the criminal provision of Federal law at 18 U.S.C. § 203. Recently, it may be noted, a former Member of Congress was indicted and pleaded guilty to receiving compensation while a Member of Congress from a client/hospital for services rendered before Federal agencies by law firms with which the Member was affiliated or connected in some way.[86]

As to the practice of law before Federal agencies by law firms with which a Member of Congress is affiliated, the House Committee on Standards of Official Conduct in Advisory Opinion No. 1, January 26, 1970, advised Members concerning the prohibition of 18 U.S.C. § 203:

> The Committee emphasizes that it is not herein interpreting this statute but notes that the law does refer to any compensation, directly or indirectly, for services by himself or another. In this connection, the Committee suggests the need for caution to prevent the accrual to a Member of any compensation for any such services which may be performed by a law firm in which the Member retains a residual interest.

The Department of Justice has also noted in an informational letter that section 203 "bars a partner in a law firm from sharing in any fees received by the firm for representational activities performed by the firm before any department or agency during the time he is or was a Federal employee" or official. Although such a fee sharing or partnership arrangement might be violative of sec-

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[85] House Report No. 364, 64th Congress, 1st Session; Congressional Record, April 17, 1916. pp. 6312-6314.

[86] *United States* v. *Eilberg*, Criminal No. 78-311, (D.C. E. Pa. 1978); 465 F. Supp. 1076 (E.D. Pa. 1979); see report of guilty plea in *Washington Post*, Feb. 25, 1979, p. A1; this former Member was also suspended from the Pennsylvania bar for these activities, see *Post*, March 30, 1979, p. A9, 441 A. 2d 1193 (Pa. 1982); note also 507 F. Supp. 267 (E.D. Pa. 1980).

tion 203 when the firm participates in a Federal practice, the Department of Justice was of the opinion that an arrangement other than one where the Federal officer or employee shares in the profits of the firm, such as where he receives a fixed salary, may be permitted under the law even when the firm receives some fees for Federal practice. The Justice Department stated that "this office has interpreted § 203 not to apply to a person who receives a fixed salary as an employee of a firm (as opposed to someone who shares in the firm's profits), even though some of the firm's overall income may be attributable to service covered by § 203." [87]

In addition to a Member of Congress receiving compensation as a salaried "employee", rather than as a partner in a law firm with a Federal practice, other devices might be employed in an attempt to circumvent the problem of the receipt of compensation by a Member of Congress for services rendered by partners before Federal agencies. Since the receipt of compensation for such services is a necessary element of the offense,[88] a firm might attempt to establish a separate bookkeeping arrangement where the Member of Congress would only share in the fees received for non-Federal matters, and not share in the compensation the firm receives for its Federal practice. Question may arise in this situation, however, as to the effectiveness or "tightness" of an internal bookkeeping system to prevent the Member from sharing in the firm's compensation received from its Federal practice. Arguments could be raised that general revenues to a firm from its Federal practice, although not accruing directly to the Member, are benefitting the firm as whole and thus the Member in particular as a partner who shares in the general success or failure of his firm.

Another device employed to circumvent the problem of compensation accruing to a Member for a firm's Federal practice has been the establishment of a "dual partnership", that is, one "non-Federal practice" partnership with which the Member of Congress is associated, and one partnership which excludes the Member of Congress and which engages in practice before Federal agencies. Although such dual partnership arrangements might in some instances technically circumvent the § 203 problem,[89] the ethics of such a situation has been increasingly questioned, particularly with regard to the American Bar Association "Code of Professional Responsibility." That Code, at Disciplinary Rule 5-105(D) states specifically:

> If a lawyer is required to decline employment or to withdraw from employment under DR 5-105 [conflicts of interest], no partner or associate of his firm may accept or continue such employment.

Thus, since a Member is prohibited from such "employment" before Federal agencies (that is, barred from receiving compensation for such services), it may be argued that a Member's partners and associates are likewise barred from such employment and compensation. The apparent reasoning behind such a prohibition con-

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[87] See note 33.
[88] *May* v. *United States*, supra.
[89] 40 Op. Atty. Gen. 287 (1943); New York City Bar Association, Committee on Professional Ethics, Opinions, No. 863, 19 The Record 424 (1964).

cerning the avoidance of conflicts of interest by an attorney or his partners was expressed in an opinion of the American Bar Association Committee on Professional Ethics: "The relations of partners in a law firm are so close that the firm, and all the members thereof, are barred from accepting any employment, that any one member of the firm is prohibited from taking." [90]

Discussing the ethics of such arrangements, the Association of the Bar of the City of New York in its work "Congress and the Public Trust," offered the following observations and conclusions:

> While the use of two firms allows a Member's partners to accept Federal matters without violating Section 203, the ethics of such arrangements pose a different question. For conflict-of-interest purposes, it is well settled that neither a firm nor any member may accept employment which any member of the firm cannot properly accept * * *.
>
> Under this reasoning, individual partners of a Member of Congress and other firms to which they belong should be precluded from any employment forbidden to the Member as a conflict of interest. Federal law supplies the conflict rule which disqualifies the Member [18 U.S.C. § 203], and the legal profession, basing its attitude upon its knowledge of the partnership relation, follows a principle which disqualifies his partners. [See DR5-105(D), ABA Code of Professional Responsibility.]
>
> It must be admitted, however, that the legal profession has never moved against such dual arrangements of lawyers in Congress * * *.
>
> Whether or not such dual arrangements technically comply with formal rules of ethics their appearances are damaging to the public, the Congress, and the legal profession. Under the higher-than-market-place standards which lawyers and Members of Congress should follow, we strongly recommend that those law firms which include Members of Congress who continue to practice for any reason terminate any such dual arrangements and accept no employment forbidden to the Member of Congress * * *.
>
> The Federal agencies before which a Congressman's partners practice are creatures of Congress. The Member of Congress votes on their appropriations and writes the statutes they administer. Federal officials may be influenced by a Congressman's partner's appearance in much the same way they would be influenced by the Member himself.[91]

Other General Rules.—If a Member does engage in the practice of law during his term in office, the Member should be aware that in addition to the limitation on outside earned income and the restrictions on particular practices discussed above, the general regulations on outside compensation by Members would generally

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[90] Opinion No. 33 (1931).

[91] Association of the Bar of the City of New York, Special Committee on Congressional Ethics, *Congress and the Public Trust,* New York 1970, James C. Kirby, Jr., Executive Director, pp. 112, 113, and 115.

apply. That is, in addition to barring the receipt of compensation for services before Federal agencies, the Member should not accept compensation because of influence improperly exerted from his position in Congress; may not accept compensation from foreign governments; and may not hold or enjoy contracts with the United States Government. Further, the American Bar Association has promulgated ethical standards and Disciplinary Rules which would be applicable to attorneys who hold public positions.

Canon 9 of the American Bar Association "Code of Professional Responsibility" provides generally that: "A lawyer should avoid even the appearance of professional impropriety." More specifically, Disciplinary Rule 8-101 provides:

DR 8-101 ACTION AS A PUBLIC OFFICIAL

(A) A lawyer who holds public office shall not:

(1) Use his public position to obtain, or attempt to obtain, a special advantage in legislative matters for himself or for a client under circumstances where he knows or it is obvious that such action is not in the public interest.

(2) Use his public position to influence, or attempt to influence, a tribunal to act in favor of himself or of a client.

(3) Accept anything of value from any person when the lawyer knows or it is obvious that the offer is for the purpose of influencing his action as a public official.

Financial Disclosure. Under the provisions of the "Ethics in Government Act of 1978",[92] Members of Congress must file annual personal financial disclosure statements with the Clerk of the House by May 15 of each year. In addition to various information required to be disclosed (which is discussed in a later chapter), Members must disclose information concerning income and compensation. The source, type, and amount of all income (other than dividends, interest, rent, and capital gains which are listed separately) from any source must be listed. Income from current employment by the United States Government need not be reported. Honoraria aggregating $100 or more from any source in the preceding year must be included as to the source, date, and amount.[93]

Income in the form of dividends, interest, rent, and capital gains exceeding $100 is to be listed as to the source and type and the category of amount into which it falls: not more than $1,000; greater than $1,000 but not more than $2,500; greater than $2,500 but not more than $5,000; greater than $5,000 but not more than $15,000; greater than $15,000 but not more than $50,000; greater than $50,000 but not more than $100,000; or greater than $100,000.[94]

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[92] P.L. 95-521 as amended by P.L. 96-19.
[93] 2 U.S.C. § 702(a)(1)(A).
[94] 2 U.S.C. § 702(a)(1)(B).

Chapter 8. OUTSIDE EMPLOYMENT AND COMPENSATION OF HOUSE EMPLOYEES

Highlight

As to outside employment, House employees should note generally:

—they must not allow an outside job to interfere with fulfilling and performing their official congressional duties, and so must restrict outside employment to their "free" time;

—in addition to a possible "time" conflict, there may be an inherent conflict of interest between the "substance" of one's outside employment and one's congressional job;

—advice and opinions on the ethics or possible conflicts of interest concerning outside employment should be sought from one's supervisory personnel and from the Committee on Standards of Official Conduct.

Employees are restricted in some specific areas of employment, and in some areas of receiving compensation. For example, employees *may not:*

—receive compensation from foreign governments;

—represent persons in a private capacity before the Federal Government, or in a court on matters affecting the Federal Government;

—receive honoraria in excess of specified limits, or in excess of the usual and customary amount;

—act as an agent of a foreign principal;

—use the influence of their position improperly to receive compensation or benefits;

—receive compensation over a certain amount for more than one Government position;

—engage in "self-dealings" with private foundations without incurring tax penalties.

Certain House employees are required to file annual financial disclosure statements detailing specific information on certain income received, in addition to other financial information required to be disclosed.

Chapter 8. OUTSIDE EMPLOYMENT AND COMPENSATION OF HOUSE EMPLOYEES

There is no statutory provision under Federal law, nor Rule of the House of Representatives, which flatly prohibits all outside or additional employment of employees of the House. General ethical standards and House Rules, however, require House employees to fulfill their congressional duties for which they are paid, and thus would work to allow an employee to engage in outside employment activities only on one's "free" time.[1] Additionally, questions may arise as to an inherent conflict with one's official duties in relation to certain outside employment, even if such employment is not prohibited by specific statute or rule.

Although no general prohibition on outside employment exists, several provisions of Federal law and House Rules work to regulate and restrict particular outside employment activities of House employees. Thus, for example, House employees may not receive compensation from foreign governments;[2] may not represent persons in a private capacity before the Government or in court in matters affecting the Government;[3] are limited in the amount of honoraria which may be received for services rendered;[4] are prohibited from acting as an agent for a foreign principal;[5] may not use the influence of their official position improperly to receive compensation;[6] and may be restricted in dealings with private foundations.[7] Finally, certain outside compensation and business transactions must be disclosed in annual personal financial disclosure reports to be filed by employees compensated at a rate of a GS–16 or more, and by at least one principal assistant to a Member if no staff employee of that Member receives a GS–16's salary or more.[8]

Performance of Congressional Duties. House employees who engage in private employment activity may not do so to the neglect of official congressional duties, nor on "official time" for which salary is received from the United States Treasury. The Rules of the House of Representatives specifically require that a Member not retain anyone on his clerk hire allowance "who does not perform duties commensurate with the compensation he receives," [9] Additionally, the "Code of Ethics for Government Service" states that any person in Government service should "Give a full day's labor for a full day's pay; giving to the performance of his duties

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[1] See; "Code of Ethics for Government Service", 72 Stat. part 2, p. B12, paragraph 3; Rules of the House of Representatives, Rule XLIII(8).
[2] United States Constitution, Art. 1, Sec. 9, cl. 8.
[3] 18 U.S.C. §§ 203, 205.
[4] 2 U.S.C. § 441i; House Rule XLIII(5).
[5] 18 U.S.C. § 219.
[6] House Rule XLIII(3).
[7] 26 U.S.C. §§ 4941, 4946.
[8] P.L. 95–521, 2 U.S.C. § 701 et seq.
[9] House Rule XLIII(8).

his earnest effort and best thought." [10] These provisions recognize that a House employee is hired for and is paid from United States Treasury funds for the performance of official congressional duties,[11] rather than private or personal activities. Outside employment which detracts from the performance of, or from the time and attention to one's Government job, would thus apparently be contrary to these standards.

Several ethical standards apply to the relationship between one's congressional duties and outside compensation or employment. Generally, House employees may not improperly use their official position to receive compensation or benefits for themselves. The Rules of the House of Representatives specifically prohibit a House employee from receiving compensation or allowing compensation to accrue to the employee's beneficial interest "the receipt of which would occur by virtue of influence improperly exerted from his position in Congress." [12] Along similar lines, the Code of Ethics for Government Service prohibits the use of confidential information one receives in the course of public employment "as a means for making private profit." [13]

Certain employment activities may raise questions of an inherent conflict of interest with one's congressional duties. Although there is no specific statute or rule which prohibits outside employment activities of House staffers which "conflict" with official duties, an inherent conflict may arguably arise when an employee's official duties are directly related to matters in which a private employer is interested, or when an employee's private economic or employment interests otherwise influence his public duties. Although the term "conflict of interest" may be subject to various interpretations in general usage, as noted in a study on congressional ethics, the term under Federal law and regulation "is limited in meaning; it denotes a situation in which an official's conduct of his office conflicts with his private economic affairs." [14] The ultimate concern behind the conflict of interest principle was discussed by the New York City Bar Association's Special Committee on Congresional Ethics which stated: "The risk, then, is risk of impairment of impartial judgment, a risk which arises whenever there is a temptation to serve personal interests." [15]

Although no House Rule specifically prohibits "conflicting" employment (as in the Senate Rules),[16] in drafting the Code of Ethics for Government Service it was apparently recognized that outside compensation or employment may have an effect upon independence of, and the general performance of, official duties by Government employees. The Code thus states specifically at paragraph 5 that an employee should "never discriminate unfairly by the dis-

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[10] 72, Stat. part 2, B12, para. 3.

[11] See; Regulations of the House Administration Committee; "Regulations and Accounting Procedures for Allowances and Expenses of Committees, Members and Employees of the U.S. House of Representatives", parts II(C)(2)(a) and III(B)(2)(a), December 1980 ed.

[12] House rule XLIII(3).

[13] 72 Stat. part 2, B 12, paragraph 8.

[14] Getz, Robert S., *Congressional Ethics*, Nostrand 1967, p. 3; see also Manning, Bayless, *Federal Conflict of Interest Laws*, Harvard University Press 1964, pp. 2–5; *Black's Law Dictionary*, Fifth Ed., West Publishing Co., 1979, p. 271.

[15] *Congress and the Public Trust*, James C. Kirby, Jr., Executive Director, New York 1970, p. 39.

[16] See: Senate Rule XLV(2) as to outside compensated employment.

pensing of special favors or privileges to anyone, whether for remuneration or not", and further prohibits the receipt of any "benefits" by an employee "under circumstances which might be construed by reasonable persons as influencing the performance of his governmental duties."

Professional Staff of Committees. Professional staff members of the standing committees of the House are instructed by House Rules not to "engage in any work other than committee business". Further, the House Rule provides that such professional staff members "shall not be assigned any duties other than those pertaining to committee business." [17] Since no official interpretation or ruling on the provision is apparent, questions may arise as to whether the prohibition upon engaging in "any work other than committee business" would preclude professional staff employees from holding any outside or additional employment from their congressional job. Research into the legislative history of this Rule, which originated from the Legislative Reorganization Act of 1946, 60 Stat. 812, however, has failed to reveal specific congressional intent to apply the prohibition in question to "moonlighting" or off hours employment activity by professional staffers. Rather, it appears that the provision was intended to insure that professional staff members of committees would work exclusively on committee business during their congressional working hours, as opposed to performing "other congressional office duties".[18] As noted in the floor debates on the provision, this was to insure a continuing full time professional staff of experts for the standing committees.[19]

Thus, absent future rulings from the House to the contrary, it would appear that professional staff members of congressional committees are generally under similar regulations as staff employees of House Members and other House employees with respect to outside employment. It should be noted that the standing committees of the House are apparently authorized to determine certain terms and conditions of employment of their professional staff,[20] other than those established or governed by specific statute or rule, and thus might establish more stringent or restrictive regulations concering the outside or additional employment of its own professional staff as the committee deems necessary for its efficient operation. Regulations of the committees should be examined, therefore, for further guidance on standards of conduct for the committee's employees.

Dealings With the Federal Government. Congressional employees are generally prohibited from private representational activities on behalf of another before the agencies of the Federal Government, or in a court in a matter in which the United States is a party or is interested. Criminal provisions at 18 U.S.C. § 203 prohibit employees from receiving compensation, directly or indirectly, for any "services rendered" before agencies of the Federal Government; and 18 U.S.C. § 205 prohibits employees from acting as

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[17] House Rules X1, cl. 6(a)(3).

[18] Report of the Joint Committee on the Organization of Congress, pursuant to H. Con. Res. 18, "Organization of Congress", 79th Congress, 2d Session S. Rept. No. 1011, March 4, 1946, p. 10; See also S. Rpt. No. 1015, 90th Congress, 2d Session, pp. 4-5.

[19] 92 *Congressional Record* 6442, 79th Congress, 2d Session, June 6, 1946.

[20] See House Rule XI, Cl. 6

"agent or attorney" for someone, with or without compensation, before a Federal agency or in court concerning a matter affecting the Government.

As to the prohibition on receiving compensation for services rendered before a Federal agency in 18 U.S.C. § 203, it should be noted that the prohibition extends to the receipt of such compensation "directly or indirectly". Therefore, if a congressional employee is in a partnership arrangement or otherwise shares in the fees from services rendered before Federal agencies, a violation of this provision may occur even if the employee did not personally perform services before the agency.[21] As noted in an informal letter opinion from the Department of Justice, this section "bars a partner in a law firm from sharing in any fees received by the firm before any Federal department or agency during the time he is or was a Federal employee." [22] Although such fee sharing or partnership arrangements concerning Federal agency practice would be prohibited, the statute as interpreted by the Justice Department would apparently allow a congressional employee to receive a fixed salary from a firm or organization which derives some revenue from Federal agency practice. The Justice Department letter cited above noted that "this Office has interpreted § 203 not to apply to a person who receives a fixed salary as an employee of a firm (as opposed to someone who shares in the firm's profits), even though some of the firm's overall income may be attributable to service covered by § 203."

As noted above, the provisions at 18 U.S.C. § 205 would generally prohibit a congressional employee from acting as agent or attorney for someone before a Federal agency or a court in a matter affecting the United States, even if the employee receives no compensation for such activity. Although the proscribed conduct under § 205, that is, acting as agent or attorney, might require more than mere "services rendered" as in § 203, it does not appear that an individual must actually be an attorney or have a strict common law agency relationship with another for such person's conduct to fall within the statute.[23] Thus, House employees should avoid private representation of persons before the Government except for those activities which are specifically exempt from the statute, such as uncompensated work in disciplinary or personnel proceedings, or the representation of certain family members or persons to whom the employee acts as personal fiduciary in certain matters not connected with the employee's governmental duties.

Although Federal employees under §205 may not represent another before the Government, such employees may be permitted to represent themselves before the Government without violating the provisions of 18 U.S.C. §205.[24] Thus, congressional employees would apparently be permitted to represent themselves before agencies of the Government for grants, aid, supply contracts or pro-

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[21] See: Advisory Opinion of the House Committee on Standards of Official Conduct, Advisory Opinion No. 1, January 26, 1970.

[22] Letter of March 14, 1978, from Leon Ulman, Deputy Assistant Attorney General, Office of Legal Counsel, Department of Justice.

[23] *United States* v. *Sweig*, 361 F. Supp. 1148 (D.C.N.Y. 1970).

[24] See: 14 Op. Atty. Gen. 483 (1874); memorandum of Attorney General, January 28, 1963, 18 U.S.C. §201 note, re: 18 U.S.C. §§ 203 and 205

curements, although they could not represent others without a violation of section 205. As to the Government entering into contracts with Federal employees in general, the Federal Procurement Regulations state that contracts between the Government and Federal employees, or firms substantially owned or controlled by Federal employees, should not knowingly be entered into "except for the most compelling reasons", such as where the needs cannot otherwise be reasonably fulfilled.[25] Additionally, it should be noted that the general ethical standards in the Code of Ethics for Government Service state that an employee "Should engage in no business with the Government, either directly or indirectly, which is inconsistent with the conscientious performance of his governmental duties."[26] After such a contract, grant, or employment has been negotiated by an employee for himself, the conflict of interest and ethical restrictions on "time" and "subject matter" conflicts, as well as the restrictions on dual Government pay and employment discussed below, would of course come into effect if the employee remains in the employ of the House.

Dual Government Employment. Problems arise if a congressional employee seeks outside income from additional Government employment. Provisions of the United States Code dealing with dual pay and dual employment in the Federal Government prohibit individuals paid by the Clerk of the House from holding another Government position if the salary of the two positions combined exceeds $7,724 per year.[27] This provision also prohibits the receipt of pay from two positions, both paid by the Clerk of the House, if the aggregate salary from the two House positions exceeds the maximum per annum rate of pay authorized to be paid out of the clerk hire allowance of a Member.[28] The dual pay provisions allow receipt of more than the $7,724 limit for multiple employment when the positions involved are expert or advisor positions and pay is received on a "when-actually-employed" basis for different days.[29]

This limitation on receiving pay for more than one Government job applies specifically to more than one "position", defined in the statute to mean "a civilian office or position (including a temporary, parttime, or intermittent position), appointive or elective, in the legislative, executive, or judicial branch of the Government * * *."[30] When one is hired or retained as an independent contractor for services by the Government rather than appointed to a civilian office or position then, the restriction on the dual employment would arguably not apply.[31] The relationship involved in such a situation would not be one of employer-employee, but rather a contractual one based on an independent contract, and thus such employment would not involve a "civilian office or position" subject to the dual compensation provisions.[32] The elements of an em-

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[25] 41 C.F.R. §1-1. 302-3.
[26] 72 Stat. part 2, B12, paragraph 7.
[27] 5 U.S.C. §5533(c)(1).
[28] 5 U.S.C. §5533(c)(2).
[29] 5 U.S.C. §5533(c)(4).
[30] 5 U.S.C. §5531.
[31] See: *Metcalf & Eddy* v. *Mitchell*, 269 U.S. 514, at 518, 519-521 (1925); "Federal Personnel Manual", Civil Service Commission, Ch. 304, subchapter 1, section 1-4.
[32] See: 26 Comp. Gen. 188 (1946); 26 Comp. Gen. 442; 42 Comp. Gen. 395 (1963); Comp. Gen. Decision B-174226, January 12, 1972; 27 Comp. Gen. 695 (1948).

ployer-employee relationship, as opposed to an independent contractor status, have been noted by the Comptroller General and the Civil Service Commission to include "first, performance of a Federal function, second, appointment or employment by a Federal officer, and third, supervision and direction by a Federal officer."[33]

Foreign Interests. Employees of the House are prohibited, as are other Federal employees, by the provisions of the United States Constitution from receiving an "emolument" of "any kind whatever" from a foreign government or a representative of a foreign state, without the consent of the Congress.[34] An "emolument" is generally defined as "any profit, gain, or compensation received for services rendered."[35] Although Congress has consented by statute to the acceptance of certain minimal "gifts" or "decorations" from foreign governments by Federal employees, no such general consent for the receipt of any emoluments or other compensation from foreign governments was granted by Congress to current Federal employees in the provision known as the Foreign Gifts and Decorations Act.[36] Thus, House employees are generally prohibited from receiving any payment for their services rendered to official foreign interests, such as from ambassadors or embassies of a foreign government, or agencies or instrumentalities of a foreign nation. This constitutional ban on compensation from foreign governments apparently has been interpreted to extend as well to multinational organizations made up of foreign governmental units.[37]

In addition to the prohibition on compensation from foreign governments, House employees are prohibited by statute from acting as an agent or attorney for a foreign principal who is required to register under the Foreign Agents Registration Act of 1938, that is, generally, those engaged in propaganda, politics, or lobbying.[38] It should be noted that as well as restrictions on compensation from foreign interests, statutes and House Rules regulate or restrict the receipt of gifts or campaign contributions from any foreign national.[39]

Honorarium Restrictions. Employees of the House are generally permitted to accept honoraria for their personal appearances, articles, speeches and similar services. Federal statutory provisions, however, restrict the amount of honoraria which may be accepted by Federal employees for a single event.

The statute at 2 U.S.C. §441i prohibits Federal officers and employees from accepting "excessive" honorariums. The statute presently limits the amount of an honorarium to $2,000, excluding amounts for travel and subsistence expenses and amounts incurred for agents' fees or commissions, which may be accepted for any appearance, article or speech.

The term "honorarium" is not specifically defined within the statute prohibiting excessive honorariums. However, under the reg-

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[33] Federal Personnel Manual, supra.
[34] United States Constitution, Art. 1, Sec. 9, cl. 8.
[35] 49 Comp. Gen. 819, 820 (1970); B-180472, March 4, 1974; B-180472, May 9, 1974.
[36] 5 U.S.C. §7342, as amended by P.L. 95-105.
[37] Note E.O. No. 11446, January 16, 1969 concerning decorations from multinational organizations, 5 U.S.C. §7342(a)(2), as amended by P.L. 95-105, as to gifts and decorations from foreign governments.
[38] 18 U.S.C. §219; see Foreign Agents Registration Act, 22 U.S.C. §611 et seq.
[39] 2 U.S.C. §441e; House Rule XLIII(4).

ulations of the Federal Election Commission, the agency authorized to promulgate regulations on this statute,[40] the term "honorarium" is defined to mean the payment of something of value "accepted as consideration for an appearance, speech, or article."[41] The regulations and the statute note that an honorarium does not include payment for agents' fees or commissions, or payment or provisions for actual travel or subsistence, "including transportation, accommodations, and meals for the officer or employee and spouse or an aide * * *."[42] The regulations further define the terms "appearance", "speech", and "article".[43]

The regulations of the Federal Election Commission additionally provide a description of what an "honorarium" is *not*. The regulations exclude from the definition of honorarium "an award", which is a gift in recognition for some religious, educational, scientific, civil, etc., achievement which is given by means of a selection process with established criteria, for which the recipient is not required to apply or to take any specific action in competition for the award, and which does not require the recipient to make a speech, appearance or to write an article as a condition for receiving the award.[44] Further, an honorarium does not include a "gift", which is described as "a voluntary conveyance of real or personal property which is made gratuitously, and is not supported by consideration, and is not made to serve in place of an honorarium or a contribution."[45] Also excluded and distinguished from an honorarium is "a stipend", defined as "payment for services on a continuing basis, including salary or other compensation paid by news media for commentary on events * * *."[46]

In an advisory opinion by the Federal Election Commission, the Commission distinguished between an "honorarium" and a "stipend" by noting that money received by a Federal official "is considered an 'honorarium', regardless of whether it is offered gratuitously or as a fee, if it is accepted as consideration for an appearance, speech or article" and if such money is "accepted as a payment for a single event or transaction and under circumstances which do not imply a continuing compensatory relationship between the parties for similar services." A "stipend", on the other hand, would be money which "is accepted in the form of fixed or regular compensation intended as consideration for the rendering of services, e.g., a salary."[47]

Thus, money received by an employee of the House for an award, a gift, a stipend, or as proceeds from the publication of a book,[48] is not considered to be an honorarium, and therefore would not be subject to this statutory limitation upon "honoraria".

An honorarium which is earned by a Federal officer or employee and which is paid to a charitable organization will not be treated

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[40] 2 U.S.C. § 438.
[41] 11 C.F.R. § 110.12(b).
[42] Id.
[43] 11 C.F.R. § 110.12(b)(2)–(4).
[44] 11 C.F.R. § 110.12(c)(1).
[45] 11 C.F.R. § 110.12(c)(2).
[46] 11 C.F.R. § 110.12(c)(3).
[47] AO 1975–46, 40 FR 57756, December 11, 1975 (note modification by 1976 Amendments to F.E.C.A., 41 FR 46416, October 20, 1976).
[48] Federal Election Commission Advisory Opinion, AO 1975–77, 40 FR 51611, November 5, 1976; see also Cong. Rec., daily ed., Oct. 8, 1974, at page S18526.

as an honorarium to the Federal employee for purposes of the statutory limitation. The Internal Revenue Service has ruled in Revenue Ruling 79-121 that when an honorarium is earned and then transferred to a charitable organization, the honorarium is to be treated as income of the Federal officer or employee with an offsetting tax deduction available to be taken for the charitable contribution.

Private Foundations. Tax penalties may arise if certain employees of the House engage in acts of "self-dealing" with a "private foundation". Provisions of the Internal Revenue Code at 26 U.S.C. § 4941 prohibit certain dealings, such as those involving the receipt of compensation or certain expenses, with a private foundation by some government officials, including employees of the House who receive a salary of at least $15,000 per year. The tax sanctions include an imposition of an excise tax on both the self-dealer and the manager of the foundation, which increase in size if the original matter is not rectified within a certain time, or for repeated or willful and flagrant violations.

Financial Disclosure Reports. Employees of the House who receive a salary equal to a GS-16 or more, and at least one principal assistant to a Member if no staff employee of that Member receives at least a GS-16 salary, must disclose certain outside compensation and business transactions in annual personal financial disclosure reports filed with the Clerk of the House by May 15 of each year. The reports must detail financial information for the preceding year concerning several specified areas: income; gifts and reimbursements; financial holdings; debts; transactions in property or securities; positions held in businesses or organizations; and arrangements or agreements for continuing compensation, benefits or future employment. An employee newly coming into a covered position must file the required disclosure statements within 30 days after assuming his position.

Chapter 9. FINANCIAL INTERESTS AND DISCLOSURE

Highlight

Generally, it has been recognized that the financial investments and holdings of Members, and to a lesser degree employees, of the House may raise conflicts of interest in relation to the performance of official duties. However, Members and employees are not required to divest assets upon entering their position or employment. Additionally, Members are not mandatorily disqualified from voting on issues affecting personal financial interests. Public financial disclosure was seen as the major regulation and deterrent to financial conflicts of interest.

Specifically, as to financial interests, Members and certain House employees:

—must file personal financial disclosure statements by May 15 of each year detailing specific financial information concerning themselves and their spouse and dependent children;

—may establish "blind trusts" to which assets may be transferred in an effort to eventually avoid conflicts of interest which may arise because of financial holdings;

—are prohibited, as are all Members, officers and employees of the House, from improperly using their official positions in Congress for their own personal gain.

A Rule of the House concerning abstention from voting because of a direct personal or pecuniary interest in a matter might in some instances apply to the financial investments of a Member, generally, when the Member is affected as an individual rather than as a member of a class.

Chapter 9. FINANCIAL INTERESTS AND FINANCIAL DISCLOSURE

The private financial interests and investment holdings of employees and Members of the House and their families may raise some ethical and conflict of interest issues for such employees and Members in the performance of their official duties. Circumstances may arise where Members of the House must vote on legislation, or where Members must make decisions or staff employees give opinions or assistance in committee concerning matters which directly affect or have substantial impact upon their personal financial interests or holdings. Concern is expressed in these instances that a breach of the "public trust" might occur, that is, that the personal financial interests of the employee or Member would subtly influence his vote, opinion, or decision, rather than having the interests of the general public or the Member's constituency as the motivating factor or primary influence in the decision making process of the public official.

As discussed by the New York City Bar Association in its work entitled "Congress and the Public Trust":

> The evil is not only the possibility or appearance of private gain from public office, but the risk that official decisions, whether consciously or otherwise, will be motivated by something other than the public's interest. The ultimate concern is bad government, which always means actual harm to the public.
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> The evil, then, is risk of impairment of impartial judgment, a risk which arises whenever there is a temptation to serve personal interests. The quality of specific results is immaterial. In this sense, conflict-of-interest regulation is true to the fiduciary principle. Like other fiduciaries, such as guardians, executors, lawyers, and agents, the public trustee has a duty to avoid private interests which cause even a risk that he will not be motivated solely by the interests of the beneficiaries of his trust.[1]

Federal statutes, regulations or rules of the House, however, do not specifically prohibit a Member or an employee of the House from holding a financial asset or interest which might "conflict" with or influence the performance of the Member's or employee's official duties. Even the House Rule limiting the amount of income a Member may receive in a year is applicable only to "earned" income, and not income from financial assets, investments, or other

[1] *Congress and the Public Trust*, Report of the Association of the Bar of the City of New York Special Committee on Congressional Ethics, James C. Kirby, Jr., Executive Director, New York 1970, pp. 38–39.

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equity.[2] Certain House Rules and ethical standards may apply in some instances, however, to some particular aspect of outside financial interests. Specifically, Members and employees of the House are prohibited from using their official position in the Congress for their own personal gain.[3] Additionally, in some rare instances, the House rule pertaining to abstentions from voting where the Member is personally interested might be applicable.[4]

The statutory provisions requiring annual personal financial disclosure by Members and certain employees do relate directly to financial interests, investments and assets.[5] Financial disclosure provisions were seen as the major regulation and monitor on possible conflicts of interest due to outside financial holdings, after proposed requirements for divestiture of potentially conflicting assets, or mandatory disqualifications from voting by Members were rejected as impractical or unreasonable.[6]

As for Members of the House, although it was apparent that potential conflicts of interest may exist between a Member's official duties and his personal financial interests, it was recognized that Members of Congress will enter public service owning assets and having private investment interests like other citizens in the general public. Members of Congress could not be expected to "fully strip themselves of worldly goods." [7] Even a proposed selective divestiture of potentially "conflicting" assets raises problems in the legislative branch because unlike many positions in the executive branch of Government which are concerned with administration and regulation in a particular area, or with regard to a particular subject, e.g., aviation, communication, shipping, etc., the area in which a Member of Congress must exercise decision-making duties concerning legislation covers nearly the entire spectrum of business and economic endeavors. Thus, a neat divestiture of those interests which may present a conflict with official duties is not as practical in the legislative branch as in the executive branch of Government. The wisdom of divestiture in general has been questioned in some quarters in that it was feared that such divestiture of interests and ownerships could isolate or insulate a legislator from the personal and economic interests that his constituency or society in general has in governmental decisions and policy.[8]

Mandatory disqualification of a Member from voting because of a financial interest in a matter under consideration was also rejected as a solution to the potential conflict of interest problem raised by outside financial interests. In our representative form of government, it was felt that such disqualification would constitute an undesired disenfranchisement of a Member's entire constituency.[9] It has been noted that a Member may often have a community of interest with his constituency, may arguably have been elected because of, and to serve such common interest, and thus would be in-

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[2] Rules of the House of Representatives, House rule XLVII.
[3] House Rule XLIII(3); Code of Ethics for Government Service, 72 Stat. part II, B 12, para. (5).
[4] House Rule VIII(1).
[5] P.L. 95-521, 2 U.S.C. § 701 et seq.
[6] See House Documents No. 95-73, 95th Congress, 1st Session, "Financial Ethics," Communication from the Chairman, Commission on Administrative Review, pp. 9-10.
[7] *Congress and the Public Trust*, supra at p. 47.
[8] See, for example, Wisconsin Statutes Annotated, § 19.45(1), 1983-1984 Supplement.
[9] H. Doc. No. 95-73, supra at p. 9.

effectual in representing the real interests of his constituents if he were forced to be disqualified from voting on issues touching those matters of common interest. Further, formulas for determining a disqualifying interest in a particular entity affected by legislation, or formulas to determine the specific degree of interest or the required impact or effect of legislation on such entity for disqualification to be required, are difficult to establish to any practical degree.

Thus, public disclosure of assets, financial interests and investments was seen as the preferred method of regulating possible conflicts of interest of Members of the House, and certain congressional staff. It was felt that public disclosure will provide the necessary information to allow a Member's constituency to judge his official conduct as to possible financial conflicts with his private holdings, and would provide necessary information to flag potential conflicts of employees. Review of a Member's conduct by way of elections every two years was seen as an effective deterrent and regulation on potential conflicts of Members. As stated by the House Commission on Administrative Review of the 95th Congress in recommending broader financial disclosure requirements in lieu of other regulations on investment income:

> In the case of investment income, then, the Commission's belief is that potential conflicts of interest are best deterred through disclosure and the discipline of the electoral process. Other approaches are flawed both in terms of their reasonableness and practicality, and threaten to impair, rather than to protect, the relationship between the representative and the represented.[10]

Under the disclosure provisions, one method of conflict of interest avoidance which has been proffered is the creation of "blind trusts" by Federal officials, including Members and covered employees of the House. The theory behind the creation of such blind trusts is that officials will place financial assets in the trust under the exclusive control of an independent trustee. Eventually, through sale of existing, and acquisition of new assets, the identity of the specific assets and ownerships of the official in the trust will be unknown to the official and will thus be eliminated as a factor in influencing his official decision making.

Use of Office for Personal Gain. One area of outside investments and financial interests which is regulated by the House Rules and ethical standards is the use of one's position in the Congress for one's personal gain. House Rule XLIII(3) provides that a Member or an employee may not receive any compensation or allow any compensation to accrue "to his beneficial interest from any source, the receipt of which would occur by virtue of influence improperly exerted from his position in the Congress." The practical effect of this Rule would apparently be to examine certain financial transactions and benefits received by a Member or an employee to determine if such person has "used his political influence, the influence of his position to make pecuniary gains."[11]

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[10] Id.

[11] *Congressional Record*, April 3, 1968, p. 880, comments by Representative Price.

Members and employees of the House are further instructed by the provisions of the Code of Ethics for Government Service never to "discriminate unfairly by the dispensing of special favors or privileges to anyone", nor to accept "benefits under circumstances which might be construed by reasonable persons as influencing the performance of his governmental duties." [12] Thus, as noted in a preceding chapter, this provision would apparently look to the relationship between the receipt of benefits from a private source and the official duties or acts of a Member or an employee as to any appearances of possible improprieties, undue influences, or breaches of the public trust in violation of this provision which, as noted by the House Committee on Standards of Official Conduct, works to "prohibit conflicts of interest and the use of official position for any personal benefit." [13]

The Standards of Official Conduct Committee in the 94th Congress has found that the ethical standard prohibiting the use of one's official position for personal gain, specifically the provision barring the receipt of benefits under circumstances which may be construed as influencing the performance of one's governmental duties, may be violated when a Member seeks benefits from an organization when the Member in his official capacity had actively promoted the establishment of that organization. Thus, the Committee found that the standard was not observed when a Member of the House "during the period of time [the Member] was active in promoting the establishment of a * * * Bank [on a military base] he approached * * * organizers of the Bank and inquired about the possibility of purchasing stock [and subsequently purchased 2500 shares of the Bank's privately held stock] in the bank in which he had been active in his official position in establishing." [14] As noted by the Committee in its report on the matter: "If an opinion had been requested of this Committee in advance about the propriety of the investment, it would have been disapproved." [15] This conduct constituted one charge against a Member reported by the Standards of Official Conduct Committee to the full House, which accepted the Committee's recommendations and officially reprimanded the Member.

The Standards of Official Conduct Committee further found violations of ethical principles forbidding the use of public office for private gain when a Member sponsors narrow legislation to specifically deal with a personal financial interest of the Member. The Committee noted here:

> [The Member] sponsored legislation in 1961 to remove a reversionary interest and restrictions on the commercial development of land . . . in which he had a personal financial interest by virtue of his stock ownership in two corporations that held leasehold interests in such land, without disclosing such interest to Congress at any time during consideration of the legislation.

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[12] 72 Stat. part II, B 12, para. 5

[13] House Report No. 94-1364-94th Congress, 2d Session, *In the Matter of a Complaint Against Representative Robert L. F. Sikes,* Report by the Committee on Standards of Official Conduct, p. 4.

[14] Id. at p. 3, 18-21.

[15] Id. at p. 4.

> The standard of ethical conduct that should be observed by Members of the House, as is expressed in the principle in the Code of Ethics for Government Service, and which prohibits conflicts of interest and the use of official position for any personal benefit, was not observed by [the Member] in sponsoring the legislation.[16]

The Committee did not recommend congressional discipline on this particular charge, however, because of the great lapse of time between the conduct and the consideration by the Committee. Nevertheless, the Committee did state that "If such had occurred within a relatively recent time frame and had just now become a matter of public knowledge, the recommendation of some form of punishment would be a matter for consideration of the Committee."[17]

Other ethical or statutory restrictions relate to the use of confidential information received in the performance of one's official duties for the purpose of making private financial gains. The Code of Ethics for Government Service provides generally that a Member or employee should "[n]ever use any information coming to him confidentially in the performance of governmental duties as a means for making private profit." More specifically, statutory provisions prohibit the use of inside information received from the Commodity Futures Trading Commission for trading in commodity futures or in actual commodities;[18] and prohibit the use of any confidential information received by virtue of one's public position in speculating on any commodity exchange.[19]

Voting on Matters of Personal Interest. As noted above, no provisions of statute or rule presently require the divestiture of private assets or holdings by Members or employees of the House upon entering their official position. Since legislation considered by Congress affects such a broad spectrum of business and economic endeavors, a Member of the House may find himself voting on legislation which would have an impact upon a personal economic interest of the Member. This may arise, for example, in a bill authorizing appropriations for a project for which the Government contract is held by a corporation in which the Member is a shareholder, or a bill providing Federal guarantees for municipal securities when a Member is among those holding such securities. Such interests in legislation, however, have not been found under House precedents to be disqualifying interests under the Rule of the House which instructs Members to vote on each question presented unless "he has a direct personal and pecuniary interest in the event of such question".[20] It has generally been found that "where legislation affected a class as distinct from individuals, a Member might vote".[21] In some cases, it may be noted, it was found that the rule might apply when legislation affected one specific corporation, rather than a class of corporations or businesses. However, House precedents have generally shown that application of the dis-

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[16] Id. at p. 3–4.
[17] Id. at p. 5.
[18] 7 U.S.C. § 13(e).
[19] 50 App. U.S.C. § 2160(f), see 50 App. U.S.C. § 2166, for termination date of provision.
[20] House Rule VIII(1).
[21] See *Hinds' Precedents of the House of Representatives* (hereinafter referred to as *Hinds'*), volume V, § 5952, p. 504.

qualification rule is directory, rather than mandatory in nature, and one which Members have been expected to apply or not to apply for themselves.

The Rule in question, House Rule VIII, section 1, specifically provides:

> Every Member shall be present within the Hall of the House during its sittings, unless excused or necessarily prevented; and shall vote on each question put, unless he has a direct personal or pecuniary interest in the event of such question.

The explanation of this provision within the Rules of the House of Representatives, provided as annotations to Rule VIII, section 1, states:

> It is a principle of "immemorial observance" that a Member should withdraw when a question concerning himself arises (V, 5949); but it has been held that the disqualifying interest must be such as affects the Member directly (V, 5954, 5955, 5963), and not as one of a class (V, 5952 VIII, 3071, 3072; Speaker Bankhead, May 31, 1939, p. 6359–60). In a case where questions affected the titles of several Members to their seats, each refrained from voting in his own case, but did vote on the identical cases of his associates (V, 5957, 5958). And while a Member should not vote on the direct questions affecting himself, he has sometimes voted on incidental questions (V, 5960, 5961).[22]

Thus, as to financial interests of Members and their voting on legislation affecting those interests, House precedents have held that Members holding stock in national banks may vote on legislation "providing a national currency and to establish free banking" since Members "do not have that interest separate and distinct from a class, and, within the meaning of the rule, distinct from the public interest";[23] that veterans in the House may vote on questions of pay and pensions in the military since such Members "did not enjoy the benefit arising from the legislation distinct and separate from thousands of men in the country who had held similar positions";[24] that the Speaker would not rule that a Member owning stocks in breweries or distilleries would be disqualified in voting on the proposed amendment to the Constitution concerning the prohibition on the manufacture and sale of liquor;[25] and that Members who were stockholders in or had interests in import businesses may vote on a tariff bill affecting the import business since "the bill before us affects a very large class. . . . The Chair would be surprised if there were not hundreds of thousands of American citizens who were stockholders in these companies. . . ."[26]

Although the Rule has been found not to apply when a Member is affected only as a member of a class rather than as an individu-

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[22] Rules of the House of Representatives, 95th Congess, § 659.
[23] *Hinds'* supra at § 5952, pp. 503–504.
[24] Id.
[25] *Cannon's Precedents of the House of Representatives* (hereinafter referred to as *Cannon's*), Volume VIII, § 3071, pp. 620–621.
[26] *Cannon's* supra at § 3072, p. 623.

al, some precedent in the House has indicated that the Rule might apply if legislation affects only one specific corporation or business, rather than a class or group of corporations or businesses. Thus, in the instance of the vote on the constitutional amendment concerning "Prohibition," although the Speaker found that a Member interested in breweries or distilleries could vote because it affected a class of businesses, the Speaker specifically noted: "Now if there was a bill here affecting one institution, if you call it that, the Chair would be inclined to rule that a Member interested in it pecuniarily could not vote, but where it affects a whole class he can vote."[27] Similarly, in the instance where the Speaker ruled that Members with interests in import businesses could vote on a tariff bill, the Speaker noted that: "Certainly it would not be within the power of the Chair to deny a Member the right to vote except in the case where the legislation applied to one and only one corporation."[28] In the case of an amendment to a bill specifically relating to the Central Pacific Railroad, the Speaker of the House suggested that a stockholder Member should disqualify himself from voting, although a ruling disqualifying such Member was not made by the Chair:

> In this case if the gentleman from Massachusetts be a stockholder in the road the Chair would rule he had no right to vote. It differs from the case of national banks which has been brought up in several instances, in the fact that this is a single corporation, and is not of general interest held throughout the country by all classes of people in all communities. . . . But if a stockholder in a single railroad corporation, as in this case, has his vote challenged it would be the duty of the Chair to hold, if he is actually a stockholder of the road, that he has no right to vote. * * * The Chair so decides without any knowledge in this particular case. It is for the gentleman from Massachusetts whose delicacy the Chair knows and cheerfully recognizes to relieve the House from any embarrassment on that question.[29]

As noted by more recent applications of the Rule, however, even where one corporation or entity is primarily affected by legislation, a Member's interest in such corporation or entity might not be found to be a disqualifying interest in the subject matter. In a recent application of the Rule, the Speaker of the House found that Members holding New York City municipal bonds were allowed to vote on a bill guaranteeing such securities. As noted by the Standards of Official Conduct Committee:

> House precedents establish the rule that "where the subject matter before the House affects a class rather than individuals, the personal interest of Members who belong to the class is not such as to disqualify them from voting." This principle was followed by the House as recently as December 2, 1975, when the question arose whether House

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[27] *Cannon's* supra at § 3071, p. 621.
[28] *Cannon's* supra at § 3072, p. 623.
[29] *Hinds'* supra at § 5922, p. 506.

> Rule VIII(1) would disqualify Members holding New York City securities from voting on a bill to provide federal guarantees for these securities. Speaker Albert ruled that a point of order to disqualify Members holding such securities would not be sustained.[30]

Additionally, in a report issued on July 28, 1976, the House Committee on Standards of Official Conduct found that a Member's ownership of 1,000 shares of common stock in a defense contractor corporation, out of more than 4,550,000 shares outstanding, "was not, under House precedents, sufficient to disqualify him from voting on" an appropriations bill authorizing funds for a project for which the corporation was under contract with the Government to perform.[31]

Finally, the precedents within the House of Representatives have shown that the weight of authority "favors the idea that there is not authority in the House to deprive a Member of the right to vote",[32] and that "each individual Member has the responsibility of deciding for himself whether his personal interest in pending legislation requires that he abstain from voting".[33]

Interests in Corporations with Government Contracts. As noted in an earlier chapter dealing with outside compensation and employment, the Federal criminal statute which prohibits a Member of Congress from contracting with the Federal Government, or "holding or enjoying" any Federal contract,[34] does not apply to contracts with an incorporated company made for the general benefit of the corporation.[35] Thus, a Member of the House may be a stockholder in a corporation, apparently even a majority stockholder and head of a corporation, which has a Government contract, and no violation of the statutory provision barring Members from enjoying Federal contracts would arise.[36]

Additionally, as noted in the preceding section, a Member might not be found to have a disqualifying personal interest in legislation, such as an appropriations bill, because of a small stock ownership in a public corporation which has a contract to perform services for the Government on a project funded by the bill.[37]

Financial Disclosure. The major deterrent to the potential conflicts of interest which might arise because of the personal financial holdings of a Member or an employee of the House is the requirement of annual public financial disclosure by certain employees and by Members, "and the discipline of the electoral process."[38] As noted by the House Commission on Administrative Review of the 95th Congress in its recommendation of adoption of broader financial disclosure requirements: "The objectives of financial disclosure are to inform the public about the financial interests of government officials in order to increase public confidence in the

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[30] H. Rpt. No. 95-1364, supra at p. 15.
[31] Id. at pp. 14-16.
[32] Rules of the House of Representatives, 95th Congress, § 658; see *Hinds*, supra at § 5956, p. 506.
[33] H. Rpt. 94-1364, supra at pp. 15-16; see *Congressional Record*, Dec. 2, 1975, H11595 (daily ed).
[34] 18 U.S.C. § 431.
[35] 18 U.S.C. § 433.
[36] 33 Op. Atty. Gen. 44, October 29, 1921; 39 Op. Atty. Gen. 165, May 19, 1938.
[37] H. Rpt. No. 94-1364, supra at pp. 14-16.
[38] H. Doc. 95-73, supra at p. 9.

integrity of government and to deter potential conflicts of interest." [39] The annual financial disclosure by Members and employees of the House is presently required under the provisions of the "Ethics in Government Act of 1978," signed into law by the President on October 26, 1978, as Public Law 95-521, and amended by Public Law 96-19.

Basically, Members of and candidates to the House, House employees receiving a salary equal to a GS-16 or more, and at least one principal assistant to a Member if no staff employee of that Member receives at least a GS-16 salary, must disclose certain outside compensation and business transactions in annual personal financial disclosure reports filed with the Clerk of the House by May 15 of each year. The reports must detail financial information for the preceding year concerning several specified areas: income; gifts and reimbursements; financial holdings; debts; transactions in property or securities; positions held in businesses or organizations; and arrangements or agreements for continuing compensation, benefits or future employment.

What to file

The financial disclosure reports to be filed by Members and covered officers and employees of the legislative branch are to contain the following items for the calendar year preceding the filing date, unless otherwise noted. Section numbers refer to the Ethics in Government Act of 1978, (P.L. 95-521), as codified at title 2 of the United States Code, Section 701 et seq.

Income.—The source, type, and amount of all income (other than dividends, interest, rent, and capital gains which are listed separately) from any source must be listed. Honoraria aggregating $100 or more from any source in the preceding year must be included as to the source, date, and amount (Sec. 102(a)(1)(A)). Income from current employment from the United States Government need not be reported.

Income in the form of dividends, interest, rent, and capital gains exceeding $100 is to be listed as to the source and type and the category of amount into which it falls: not more than $1,000; greater than $1,000 but not more than $2,500; greater than $2,500 but not more than $5,000; greater than $5,000 but not more than $15,000; greater than $15,000 but not more than $50,000; greater than $50,000 but not more than $100,000; or greater than $100,000 (Sec. 102(a)(1)(B)).

Gifts and reimbursements.—The identity of the source and a brief description of any gifts of transportation, lodging, food or entertainment aggregating $250 or more received in the preceding year, other than the personal hospitality of an individual at his residence, must be listed. Gifts of this nature valued at less than $35 need not be aggregated for purposes of reporting (Sec. 102(a)(2)(A)).

All other gifts received aggregating $100 or more must be listed as to the identity of the source, a brief description and the amount. Gifts from relatives are not included in the reporting and gifts of

[39] Id. at p. 6.

under $35 need not be aggregated for purposes of reporting (Sec. 102(a)(2)(B)).

The identity of the source and a brief description of reimbursements from any source aggregating $250 or more in the preceding year must be listed (Sec. 102(a)(2)(C)).

Financial holdings.—Interests in property held in a trade or business, or for investment or the production of income, which have a value exceeding $1,000 must be disclosed as to their identity and category of value. Personal savings accounts aggregating $5,000 or less need not be disclosed (Sec. 102(a)(3)). The categories of value for reporting of financial holdings, stocks, bonds, and other income producing property are as follows:

(A) not more than $5,000;
(B) greater than $5,000 but not more than $15,000;
(C) greater than $15,000 but not more than $50,000;
(D) greater than $50,000 but not more than $100,000;
(E) greater than $100,000 but not more than $250,000; and
(F) greater than $250,000 (Sec. 102(c)(1)).

Debts.—Liabilities owed exceeding $10,000 excluding any mortgage on a personal residence, car loans or loans secured by household furniture or appliances, must be reported as to the identity and category of value of the liability. The categories of value are the same as the categories for financial holdings listed above (Sec. 120(a)(4)).

Transactions in property or securities.—A description, the date, and the category of value of any purchase, sale or exchange, exceeding $1,000, in real property (other than one's personal residence), and in stocks, bonds, commodity futures and other securities, must be disclosed (Sec. 102(a)(5)). The categories of value to be listed are those categories described above for financial holdings and debts.

Positions held.—Covered individuals must also report the identity of all positions held, up to the date of filing in the current year, as an officer, director, trustee, partner, proprietor, representative, employee, or consultant of any corporation, company, firm, partnership, or other business enterprise, any nonprofit organization, any labor organization, and any educational or other institution. The Act does not require the disclosure of positions held in any religious, social, fraternal, or political entity, or any position solely of an honorary nature (Sec. 102(a)(6)).

Agreements for continuing or future benefits.—Any agreements or arrangements concerning future employment, leave of absence during one's Government service, continuation of payments from a private source, or continued participation in an employee benefit or welfare plan of a former private employer must be described as to the parties, dates and terms by the reporting individual (Sec. 102(a)(7)).

Newly covered legislative employees are to file the required information concerning only income, financial holdings, debts, positions held, and agreements for continuing compensation, benefits, or future employment. Reports filed by such persons as to income are to cover the filing year and the preceding calendar year, while reports on the other items are to be current up to a specific date no more than 31 days before the date of filing (Sec. 102(b)).

Spouse and dependent children

Reports by covered individuals are required to contain financial information concerning the spouse and dependent children of the reporting person. The information to be reported by Members and covered legislative officers and employees concerning dependent children and spouse, other than a spouse living separate and apart from the reporting individual with intention of terminating the marriage, are required to contain the following:

Income.—The source of items of earned income of the spouse exceeding $1,000; and the source, type and category of income exceeding $100 received by the spouse and dependent children from any assets held by them which are required to be disclosed under "financial holdings" (Sec. 102(d)(1)(A)).

Gifts and reimbursements which are not received totally independent of the spouse's relationship to the reporting individual must be disclosed as to the identity of the source and a brief description of gifts of transportation, food, lodging, entertainment and reimbursements, and as to the value and a brief description of other gifts (Sec. 102(d)(1) (B) and (C)).

Financial holdings, debts, transactions in property or securities.—All the information required to be disclosed by the reporting individual must also be disclosed in the report concerning the financial holdings, debts, and transactions in property or securities of such person's spouse and dependent children, other than those items which are certified to be the sole financial interest or responsibility of the spouse or child and of which the reporting individual neither derives nor expects to derive any financial or economic benefits (Sec. 102(d)(1)(D)).

Legislative employees newly coming within the provisions, and persons becoming candidates to Congress, need only disclose information concerning their spouse and dependent children under this provision as to income, financial holdings, and debts (Sec. 102(d)(1)).

Blind Trusts. As part of the general information required to be disclosed under the Ethics in Government Act, a member or covered employee must generally identify and provide the required details concerning the specific assets and holdings of any trust benefiting himself, his spouse or dependent children.[40] The provisions of the Ethics in Government Act, however, provide two exceptions to this required disclosure of the assets and holdings within a trust benefiting a public official or his family. In the first instance, if a trust is created by someone other than the public official, his spouse or children, and the assets and the holdings of that trust are not known to such persons, then only the income from that trust need be reported.

The second exemption to the required reporting on the holdings within a trust specifically allows covered employees, Members and most Federal officials to establish what is called a "blind trust" to which assets and financial holdings may be transferred. Subsequent to the establishment of a blind trust in accordance with the requirements of the Act, only the category of income from the qualified blind trust, and not the assets or holdings within the

[40] Section 102(e)(1) of P.L. 95-521.

trust, would need be reported by the covered official under the financial disclosure provisions of the Ethics in Government Act of 1978.

The Ethics in Government Act sets out specific guidelines and detailed requirements concerning the creation and maintenance of blind trusts in order to insure the unconditional control and independence of the trustee over all the assets in the trust; to prevent the acquisition of those assets which the official is specifically prohibited from holding under law or regulation; and to protect the "blind" nature of the trust by shielding the official from knowledge of the holdings in the trust. The Attorney General of the United States is authorized under the Act to enforce the provisions of the Act concerning the wrongful disclosure of the assets of the blind trust by the trustee to a beneficiary, and as to the knowing receipt or solicitation of information about the trust by a reporting individual.

The general principle behind the blind trust is to shield the official from knowledge of his specific assets or holdings, and thus to avoid potential conflicts of interest or undue influence which might arise because of particular financial interests of the official or his family. Assets and holdings which are originally transferred to the trust by the official, and which are thus known to the official, will therefore in most cases still be considered financial interests of that official for purposes of any conflict of interest provisions under Federal law until notice is given by the trustee that the asset is disposed of or that the asset's value is less than $1,000.[41] Only those assets subsequently acquired by the trustee for the trust would be really "blind", and thus exempt from general conflict of interest laws. In this manner an official could not "hide" a known conflicting asset in the trust.

When an official is prohibited by law or regulation from owning specific assets, such assets may not even be obtained by the trustee for the trust. This restriction relates to prohibitions on owning specific assets, and was not intended to apply to general prohibitions on financial conflicts of interest, which would unreasonably require a day-to-day knowledge by the trustee of the duties and activities of a public official to determine if a conflict arises.[42]

SUMMARY OF REQUIREMENTS OF BLIND TRUSTS

Following is a summary listing of the requirements for blind trusts as set out in the Ethics in Government Act of 1978. These provisions appear in the Act at Section 102(e) for legislative branch personnel and are codified at 2 U.S.C. § 702(e)(1).

THE TRUSTEE

The trustee of the trust must be a financial institution, an attorney, a certified public accountant, or a broker.

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[41] See special provisions and exemptions for certain presidential appointees whose nomination is approved by the Senate, section 202(f)(4)(B) of P.L. 95-521.

[42] Senate Report No. 95-639, 95th Congress, 2d Session, "Blind Trusts", p. 18.

The trustee must be independent from and not associated with an interested party such that the trustee can not be influenced or controlled by an interested party.

The trustee may not be a past or present employee of, nor an organization affiliated with, a partner of, a relative of, or involved in any joint venture with, an interested party.

The proposed trustee must be approved by the reporting individual's supervising ethics office.

ASSETS

Any asset transferred to the trust must be free of any restriction as to its sale or transfer, unless specifically approved by the reporting individual's supervisory ethics office.

Any asset placed in a trust by an interested party will be considered a financial interest of the reporting individual for purposes of Federal conflict of interest regulations or laws, including 18 U.S.C. sec. 208, until disposed of by the trustee or until the value of such asset is less than $1,000.

The trust instrument must specifically provide that the trust will not contain any assets which an interested party is prohibited from holding under any law or regulation.

THE TRUST INSTRUMENT

The trust instrument must provide that the trustee will not consult or notify an interested party concerning management and control of the trust.

The trust instrument must provide that the trust will not contain any assets which any law or regulation prohibits an interested party from holding.

The trust instrument must provide that the trustee will notify the reporting individual when assets transferred to the trust are disposed of or when the value of such is less than $1,000.

The trust instrument must provide that the tax returns of the trust are to be prepared by the trustee and not disclosed to an interested party, other than summary information necessary for an interested party to complete his personal tax return.

The trust instrument must provide that an interested party will not receive any reports on holdings or sources of income except as to cash value, income or loss, and reports necessary for filing personal tax returns and financial disclosure statements. No such reports received may identify any asset or holding.

The trust instrument must provide that there will be no communication between an interested party and the trustee concerning the trust except for written communications relating to the general financial interests and needs of the interested parties; notification of the trustee of any new law or regulation which would prohibit any particular holding or asset in the trust; or directions to a trustee to sell all of a particular asset transferred to a trust because of a potential conflict of interest.

The trust instrument must provide that the interested parties will make no effort to obtain information on the holdings of the trust.

The proposed trust instrument must be approved by the reporting individual's supervising ethics office.

NOTIFICATION AND FILINGS

Within thirty days after a trust is approved the reporting individual must file with his supervising ethics office a copy of the trust agreement and a list of the assets which were transferred to the trust.

The reporting official must notify his supervising ethics office within thirty days after transferring an asset (other than cash) to an existing blind trust, as to the identity and category of value of the asset.

Within thirty days after dissolution of a trust the reporting official must notify his supervising ethics office of such dissolution and must file a list of the assets and their value at the time of dissolution.

When a trustee or an interested party makes any written communication to one another concerning the trust, a copy of such communication shall be filed by the person initiating it to the supervising ethics office of the reporting official within five days of the date of the communication.

PROHIBITIONS AND ENFORCEMENT

A trustee may not knowingly or negligently disclose information to an interested party which may not be disclosed; acquire holdings prohibited by the trust agreement; solicit advice from an interested party concerning the trust when prohibited by law or the trust agreement; or fail to file any required document.

A reporting individual shall not knowingly or negligently solicit or receive information concerning the holdings or transactions of the trust which he is not allowed to receive under the Act, and shall not fail to file any document as required.

The Attorney General is authorized to bring civil action against persons violating the prohibitions listed above.

EXISTING TRUSTS

Trusts existing before the Ethics in Government Act's passage may be considered blind trusts if the supervising ethics officer finds that a good faith effort was made to establish a blind trust; if the trust instrument is amended, or an agreement is made in writing, to conform the trust to the statutory requirements, and the trustee meets the qualifications; and if the trust instrument, list of assets and their value originally transferred to the trust, and a list of assets transferred and subsequently sold are filed and made available to the public.

Chapter 10. CAMPAIGN FUNDS AND PRACTICES

Highlight

As to general campaign finance requirements, Members of the House must abide by the provisions of the Federal Election Campaign Act concerning required record keeping, reporting, registration, and organization.

As to the receipt of campaign contributions, Members and employees should note the numerous restrictions under Federal Campaign laws, such as, for example, prohibitions on:

—corporate, labor union, and Government contractor contributions;
—contributions from foreign nationals;
—soliciting contributions from Federal employees;
—contributions over specified statutory limits;
—cash contributions over $100;
—receiving or soliciting contributions in a Federal building;
—misrepresenting oneself as working on behalf of a particular candidate, or circulating anonymous campaign literature;
—failing to report contributions received or expenditures made.

Concerning the use of campaign funds, rules and regulations provide that:

—campaign funds may not be converted to personal use or used for official expenses;
—campaign funds may only be used for bona fide campaign purposes;
—funds received in testimonials or other fundraisers are to be treated as campaign funds subject to the above restrictions;
—a Member may generally not use official funds, supplies, or equipment merely for campaign activity.

Concerning participation by House employees in political campaign activities, Members and employees should note:

—employees of the House are not covered by the "Hatch Act", and may engage in general partisan campaign activity on their free time;
—employees of the House are paid from public funds to perform official congressional duties for a Member, committee or officer, and are not paid to perform campaign activities on behalf of a Member or party;
—employees may therefore not engage in campaign activities to the neglect of their official congressional duties for which they are compensated. Once an employee fulfills the official duties required of him, he is free to engage in campaign activities;
—employees may not make political contributions to a Member of Congress who is the employer or employing authority of the contributor;

—Members of Congress are prohibited from soliciting political contributions from their staff as well as from other Federal employees.

Chapter 10. CAMPAIGN FUNDS AND PRACTICES

Members of the House of Representatives are under numerous restrictions and regulations concerning the use of campaign funds, and campaign finance procedures in general. The regulations and restrictions on campaign financing applicable generally to all candidates for Federal office derive predominantly from the Federal Election Campaign Act of 1971 and the subsequent amendments to that Act.[1] Under the provisions of that Act, the Federal Election Commission has been established as an independent regulatory agency to oversee Federal campaign procedures and practices regulated by the Federal campaign laws.[2] The provisions of the Federal Election Campaign Act and the regulations promulgated under that Act by the Federal Election Commission should be examined closely by Members of the House concerning their campaigns for Federal office.

This report will highlight only briefly the major provisions of the large body of Federal campaign laws relating to requirements of reporting, registration and disclosure, and restrictions on campaign contributions. Specific requirements of Federal campaign finance laws or interpretations of specific provisions, including advisory opinions, may be requested from the Federal Election Commission. This report will deal mainly with those provisions not specifically under the authority of the Federal Election Commission, that is, restrictions in the House Rules such as those on the use of campaign funds, and other ethical or conduct issues such as use of congressional staff or official equipment or supplies in a congressional campaign.

As to congressional staff working on campaigns, there are no Federal statutes, regulations or rules which specifically prohibit employees of the House of Representatives from engaging in general campaign activity. The broad prohibition against campaign activity by executive branch personnel, known as the "Hatch Act", is not applicable to congressional employees. Thus, apart from certain restrictions in the area of campaign contributions and solicitations, House employees may participate in partisan campaign activities. There do, however, exist broad ethical guidelines which direct that House staff fulfill their official congressional duties for which they receive compensation from the Government. Consequently, congressional employees should not engage in campaign activities to the neglect of their official duties; and once they have fulfilled their official duties, they are then generally free to engage in partisan campaign activity.

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[1] P.L. 92-225, 86 Stat. 3, Feb. 7, 1972; P.L. 93-443, 88 Stat. 1263, Oct. 15, 1974; P.L. 94-283, May 11, 1976; P.L. 96-187, January 8, 1980.
[2] 2 U.S.C. § 437c-438.

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General Campaign Finance Requirements. Briefly, under the Federal Election Campaign Act, a Member of the House who is a candidate for Federal office must designate a political committee to serve as his principal campaign committee.[3] Such committee, as is generally the case for all other political committees, must register with the Federal Election Commission [4] and be organized and keep records according to Federal campaign laws.[5] Each candidate to Federal office must also designate one or more national or State banks as his campaign depositories.[6]

Candidates for the House and political committees supporting them must file periodic, detailed reports, on forms provided by the Federal Election Commission, to the Clerk of the House as custodian for the FEC, concerning the receipt of political contributions and the making of political expenditures.[7] Copies of such statements required to be filed must also be filed with the Secretary of State, or similar State officer, of the appropriate State.[8]

Restrictions on Receipt of Contributions. Members of and candidates for Congress are prohibited under Federal campaign laws from receiving political contributions from the treasury funds of a corporation, labor organization or a national bank.[9] Additionally, contributions may not be accepted from persons who are Federal government contractors.[10] Such corporations, labor organizations, membership organizations or cooperatives may, however, even if holding a government contract, establish separate segregated funds, often referred to as political action committees or PACs, to which voluntary contributions, not solicited by threats of job discrimination or reprisals or by dues or assessments required as a condition for employment, are made.[11] Such PACs may then make political expenditures and contributions, and contributions may be received from them by Members and candidates for the House, up to contribution limits specified by Federal law.

Federal law restricts the amount of political contributions which may be made by, and accepted from, individuals and political committees. Multi-candidate political committees which are registered for six months with the FEC, receive contributions from 50 or more people, and contribute to at least five Federal candidates, may contribute up to $5,000 to a candidate for every primary, election, or run-off election in which the candidate is involved (and, may contribute up to $5,000 to a political committee during one calendar year, and up to $15,000 to national political party committees).[12] The political action committees of corporations and labor unions are often multi-candidate committees, and thus if qualified as described above, contributions of up to $5,000 per election may be lawfully received from such organizations. If a political committee is not a qualified multi-candidate committee it may only make con-

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[3] 2 U.S.C. § 432(e); Federal Election Commission Regulations (hereinafter FEC Regs) sec. 102.11.
[4] 2 U.S.C. § 433; FEC Regs Part 102.
[5] 2 U.S.C. § 432(a)-(d); FEC Regs Part 102.
[6] 2 U.S.C. § 437b; FEC Regs Part 103.
[7] 2 U.S.C. §§ 434, 436; FEC Regs Parts 104-106.
[8] 2 U.S.C. § 439; FEC Regs Part 108.
[9] 2 U.S.C. § 441b; FEC Regs Part 114.
[10] 2 U.S.C. § 441c; FEC Regs Part 115.
[11] 2 U.S.C. § 441b(b)(2); 2 U.S.C. § 441c(b); FEC Regs sections 114.5 and 115.3.
[12] 2 U.S.C. § 441a(a)(2); FEC Regs section 110.2.

tributions of up to $1,000 per election to a candidate.[13] As to contributions from individuals, Federal law restricts the amount of contributions which may be made by, or received from, individuals to $1,000 to any candidate or authorized committee of a candidate for each primary, election or run-off in which the candidate is involved. Individuals are further limited in making contributions to $5,000 to other political committees per year, $20,000 to national political party committees per year, and $25,000 in total political contributions in a calendar year.[14]

Political contributions are also specifically prohibited from foreign nationals not lawfully admitted to the United States for permanent residence; [15] from public utility holding companies; [16] from persons in the name of another; [17] and are prohibited in cash in amounts over $100.[18]

Political Contributions from Government Employees. Members of Congress, candidates for Congress, and Federal employees are now specifically prohibited by provisions of Federal criminal law from soliciting political contributions from Federal government employees, including employees of the House of Representatives.[19] Unlike the statute prior to its 1979 amendment, the current provision at 18 U.S.C. § 602 prohibits only the *solicitation* of political contributions from Federal employees and does not prohibit the *receipt* of such contributions. Therefore, under § 602 Members of Congress and congressional employees may apparently receive unsolicited political contributions from employees of the Federal Government. As stated in the House Report on the 1979 law amending this statute: "The provision prohibiting receipt of contributions by federal employees has been eliminated".[20]

Although Members of Congress may apparently now accept unsolicited voluntary contributions from Federal employees, even though they may not solicit contributions, it should be noted that congressional staffers who are the Member's employees or who are under the employing authority of that Member are specifically prohibited from making even unsolicited contributions to that Member of Congress under the provisions of 18 U.S.C. § 603, as amended and renumbered by P.L. 96-187. As a practical matter, then, Members of Congress should not accept such contributions from their employees.[21]

The statute at 18 U.S.C. § 602, as amended, prohibits Members, candidates to Congress, and congressional employees from "knowingly" soliciting political contributions from any other Federal employee, officer, or person receiving a salary from the United States Treasury. Inadvertent solicitations of Federal employees, therefore,

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[13] 2 U.S.C. § 441a(a)(1); FEC Regs section 110.1.
[14] Id.
[15] 2 U.S.C. § 441e; FEC Regs sec. 110.4(a).
[16] 15 U.S.C. § 79(L).
[17] 2 U.S.C. § 441f; FEC Regs section 110.4(b).
[18] 2 U.S.C. § 441g; FEC Regs section 110.4(c).
[19] 18 U.S.C. § 602, as amended by P.L. 96-187, January 8, 1980.
[20] House Report No. 96-422, 96th Congress, 1st Session, p. 25.
[21] Under the former statute Members of Congress were also prohibited from receiving contributions from Federal employees, including their staff, even when no solicitation of the contribution was shown. *Brehm* v. *United States,* 196 F. 2d 769 (D.C. Cir. 1952), cert. den. 344 U.S. 838 (1952), upholding conviction of Member of Congress for receiving campaign contributions from staff even without specific finding of solicitation or shakedown (at 770).

such as when part of a general fundraising campaign aimed at the public at large, was not intended to be a violation of this provision or its predecessor.[22] As stated in the House Report on the Federal Election Campaign Act Amendments of 1979 amending § 602:

> In order for a solicitation to be a violation of this section, it must be actually known that the person who is being solicited is a federal employee. Merely mailing to a list will no doubt contain names of federal employees [and] is not a violation of this section.[23]

The intent of the prohibition on solicitations, as discussed by its sponsor, was to prevent Federal employees for being "subject to any form of political assessment".[24] Since the statute is directed to protecting employees who because of their employment and positions may be subject to coercion, the prohibition of § 602, as noted in the floor discussion prior to the adoption of the 1979 amendments, "does not apply to solicitation of Members of Congress".[25] This interpretation is consistent with the interpretation of the predecessor statute to 18 U.S.C. § 602 which, as noted in a resolution adopted by the House in the 63rd Congress, 2d Session (1913), "should not be construed to prohibit one Senator or Member of Congress from soliciting campaign contributions from another Senator or Member of Congress."[26]

Use of Campaign Funds. Although Federal law at 2 U.S.C. § 439a[27] provides generally that campaign funds may be used to defray the expenses of holding a Federal office, and specifically prohibits the use of such funds for personal purposes only by persons who were not Members of Congress on January 8, 1980, the Rules of the House of Representatives place more restrictive regulatons on the use of campaign funds by all Members of the House. The Rules of the House require that all Members of the House use campaign funds solely for campaign purposes, and specifically probhibit the use of campaign funds for personal[28] or official purposes.[29] Campaign funds also may not be used, under the provisions of House Rule XLVI(4), for defraying the cost of preparing or printing of any mail material to be sent in a mass mailing under the Member's frank. Additionally, the House Rules provide that any proceeds from testimonials or other fund-raising events are to be treated by Members as campaign contributions subject to the above restrictions.[30]

Non-incumbent candidates for the House of Representatives, since they are not subject to the House Rules on campaign funds, are governed only by the provisons at 2 U.S.C. § 439a. That statute was amended in the 96th Congress to prohibit non-incumbent candidates to Congress from using campaign funds for personal purposes, similar to the restriction on Members by House Rule.

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[22] See 113 *Congressional Record* p. 25703, September 11, 1973.
[23] H. Rpt. No. 96-422, supra at 25.
[24] *Congressional Record,* December 18, 1979 S 19099 (daily ed.).
[25] *Id.*
[26] See *Cannon's Precedents of the House of Representatives,* Vol. VI, § 401, pp. 571-573.
[27] As amended by P.L. 96-187, Janaury 8, 1980.
[28] House Rule XLIII(6).
[29] House Rule XLV.
[30] House Rule XLIII(7).

In addition to the statutory restriction and House Rule on diversion of campaign funds to personal use, it should be noted that such diversion may result in an additional income tax liability for that individual since such funds diverted for personal use would generally be considered personal "income" to such person.[31] Further tax consequences may arise because of such conversion in the form of the loss of a tax deduction for contributors to such a candidate who uses political contributons for other than campaign purposes.[32]

No Personal Use.—Members of the House are instructed by House Rule XLIII(6) to keep campaign funds separate from personal funds; not to convert campaign funds to personal use except for reimbursements for legitimate, verifiable prior campaign expenses; and not to expend campaign funds for other than bona fide campaign purposes. This clause of the Code of Official Conduct of the House Rules was amended to read in its present form on March 2, 1977, by H. Res. 287, 95th Congress.

As discussed in the House during the debate preceding the adoption of H. Res. 287, no specific definition of "bona fide campaign purpose" is provided in the rules, and what would be considered a legitimate, or bona fide political or campaign expense, would depend on the particularized facts of a specific situation:

> We sought to make no strict definition of political expenses. What is political is a matter of fact rather than of definition. We believe that if a Member travels home for a political purpose, and it is covered by his volunteer committee out of political accounts, that this is a political expense.
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> However, what we have tried to do is to confine expenses from political accounts or volunteer committee accounts to expenses that are political. By and large, that definition will be left up to the Member and to his volunteer committee, and as it is broadly defined under the election law.[33]

This provision at clause 6 of House Rule XLIII was used as the basis for four counts of financial misconduct against a Member who was eventually censured by the House of Representatives in the 96th Congress.[34] The House Committee on Standards of Official Conduct, in recommending the censure of the Member based partly on four violations of this Rule prohibiting conversion of campaign funds to personal use, noted that for a charge alleging a violation of this clause to be sustained "it must be proved that the expenditures were not for reimbursement for legitimate prior campaign expenditures, and that the funds were in fact applied to personal use." In the instance in question the Committee concluded "that these transfers [from campaign accounts to office accounts from which personal checks were drawn, and from campaign accounts to personal accounts with the Sergeant at Arms] were made to repay

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[31] I.R.S. Proc. 68-19 (1968); Rev. Rul. 74-23 (1973).

[32] 26 U.S.C. §§ 218, 41, see definition of political contribution.

[33] *Congressional Record*, March 2, 1977, H1581 (daily ed.), comments by Representative Frenzel.

[34] *Congressional Record*, June 10, 1980, H4691-H4708 (daily ed.).

personal loans of [the Member] and to cover outstanding obligations against his personal checking account at the Sergeant at Arms."[35]

No Official Use.—The 1977 amendments to the Rules of the House of Representatives made by H. Res. 287, 95th Congress, specifically intended to build a "wall between campaign funds and official allowances".[36] Thus, the Rules of the House of Representatives, in addition to requiring that campaign funds be used only for campaign purposes and prohibiting the conversion of campaign funds to personal use, have established a specific prohibition against the maintenance or use by a Member of an "unofficial office account", that is, the House Rules prohibit the use of non-appropriated, private funds such as campaign contributions to defray official expenses of the Member.[37]

The recommendations of the House Commission on Administrative Review, substantially adopted by Congress on March 2, 1977, as revisions to the House rules on conduct (H. Res. 287, 95th Congress), set forth reasons for requiring that official expenses of a Member be paid exclusively from official, appropriated funds:

> The Commission strongly believes that private funds should be used only for politically related purposes. Official allowances should reflect the necessary cost of official expenses. Increasing official allowances . . . to eliminate reliance on private sources represents a small cost to the public for the benefits to be derived. To suggest otherwise would be to accept or condone the continuation of the present system which, at the very least, allows for the appearance of impropriety, and, at worst, creates a climate for potential "influence peddling" through private financing of the official expense of Members of Congress.[38]

As noted earlier in this discussion, no specific definition of those expenses which would be considered "political" (as opposed to "official" for which no campaign funds may be used) was provided in the House Rules or the recommendations of the House Commission on Administrative Review. During the floor discussion preceding the adoption of H. Res. 287, 95th Congress, it was noted on various occasions that what would be considered a political expense for which campaign funds could be used, rather than an official expense for which only appropriated funds could be used, would depend on the particular facts of a specific situation, that is, "[w]hat is political is a matter of fact rather than of definition".[39] Examples were noted in the House debates that a Member's travel to his home district might be considered a political expense if the purpose of the trip were campaign related; [40] and that taking certain individuals out to dinner, if such were a political meeting

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[35] House Report No. 96-930, 96th Congress, 2d Session, *In the Matter of Representative Charles H. Wilson*, May 8, 1980, p. 6.

[36] House Document No. 95-73, 95th Congress, 1st Session, "Financial Ethics", Communication from the Chairman, House Commission on Administrative Review, Feb. 14, 1977, p. 18.

[37] House Rule XLV.

[38] House Doc. 95-73, supra at p. 18.

[39] *Cong. Rec.*, Mar. 2, 1977, H1581 (daily ed).

[40] *Cong. Rec.*, supra at H1581.

rather than one relating to official duties, could be reimbursed or paid from campaign accounts.[41]

In the final report of the House Select Committee on Ethics of the 95th Congress, which was authorized to issue advisory opinions and interpretations of the amendments adopted by H. Res. 287, 95th Congress, the Select Committee discussed the intent of the Rule restricting the use of campaign funds, and possible "political" purposes for which campaign funds might legitimately be used under the Rule:

> The intent of this rule is to restrict the use of campaign funds to politically-related activities and thus to prohibit their conversion to personal use or to supplement official allowances. The rule should not be interpreted to limit the use of campaign funds strictly to a Member's reelection campaign. A retiring Member of Congress, for example, may continue to engage in various political activities which of course are not campaign-related and also are not in connection with his official duties.
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> The Federal Election Commission and the Internal Revenue Service define political expenditures as a payment or gift of anything of value made for the purpose of influencing the selection, nomination, or election of an individual to public office. However, the FEC and IRS have interpreted this definition broadly to encompass the traditional political-related activities of Members of Congress. Thus, if a Member determines, for example, that advertisements in publications of civic organizations, the mailing of holiday greetings to constituents, or travel to meetings with local party officials, would constitute a political expenditure, as so defined, or are otherwise politically-related, then he may use campaign funds for that purpose. Any such political expenditures must be fully disclosed in accordance with the reporting requirements of the FEC Act.[42]

In Advisory Opinion No. 6, issued September 14, 1982, the Committee on Standards of Official Conduct noted that in the absence of any definition in Rule XLV or Rule XLIII(6) (relating to use of campaign funds) of "political" or "official" expenses, a Member is free to use his own judgment in designating a particular expenditure as political or official. "However, [the] committee is of the view that once the Member makes his determination, he is bound by it. A single event cannot, for purposes of the House rules, be treated as *both* political and official." Therefore, in the situation which prompted the issuance of the advisory opinion, the Member was free to designate a town meeting in his district and in areas newly added to the district by reapportionment as either a political (campaign) event or as an official (representative) one. But by sending announcements of the town meeting under the frank (which can only be used in the conduct of official business), the Member

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[41] *Cong. Rec.*, supra at H1589.

[42] House Report No. 95-1837, 95th Congress, 2d Session, Final Report of the Select Committee on Ethics, p. 16.

defined the event as an official one, and thus could not use campaign funds or any other private funds to conduct, promote, or advertise the event without violating Rule XLV or Rule XLIII(6).[43] The committee noted, however, that no violation would occur if an individual or organization, such as a radio or television station, without the Member's consent, expended funds to promote the previously announced town meeting.

Franking.—Provisions of current federal law now provide that only appropriated funds, and not private contributions, may be used to pay the cost of preparing, printing, and distributing mass mailings under the frank.[44] This statutory provision enacted in 1981 codified provisions which had been in the Rules of the House of Representatives since 1977.[45]

The rationale behind the restriction on the use of campaign funds, or other private funds, for defraying the cost of mass mailings under the frank was explained by the House Commission on Administrative Review:

> The Commission believes that since the franking privilege is reserved for "official materials," it is inappropriate for franked mass mailings to be printed and prepared with private or political funds.
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> * * * * * * *
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> The Commission believes that it is necessary to make a clear separation between the public purpose and private interest in the use of the frank, and, therefore, private funds should not be used to print "official documents."[46]

Testimonials and Fundraisers.—The Rules of the House now provide that any funds received from testimonial dinners or other fund raising events are to be treated as campaign contributions (House Rule XLIII(7)), subject to all the restrictions on campaign funds. Thus, such proceeds may be used only for bona fide campaign purposes, rather than for personal, or official office uses. This restriction in its present form derived from H. Res. 287, 95th Congress, 1st Session.

In an Advisory Opinion issued by the Select Committee on Ethics in the House, the Committee found that a direct mail solicitation by a Member of the House or the spouse of a Member constitutes a "fundraising event" for purposes of House Rule XLIII(7), and thus proceeds from such a solicitation must be treated as campaign contributions which may not be converted to personal use by the Member. Finding such, the Select Committee noted that a major purpose of the revisions of the Code of Official Conduct was to prevent Members from "cashing in" on their official position in the Congress.[47]

The Select Committee on Ethics also found, in Advisory Opinion No. 11, May 11, 1977, that a Member may not accept proceeds for

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[43] Committee on Standards of Official Conduct, Advisory Opinion No. 6, September 14, 1982.
[44] 39 U.S.C. § 3210(f), P.L. 97-69, sec. 4.
[45] Rule XLVI(4).
[46] H. Doc. No. 95-73, supra at p. 19.
[47] Advisory Opinion of the Select Committee on Ethics of the 95th Congress, Advisory Opinion No. 4, Apr. 6, 1977.

his unrestricted personal use from a fundraiser which is conducted by a group which is independent from the Member.

Money received from fundraisers, and other campaign funds, may be used by a Member of the House for the Member's legal defense of court actions arising from his election to or his holding of Federal office.[48] The House Committee on Standards of Official Conduct has noted in informal opinions that the use of such funds would be considered campaign related. However, the money raised for a legal defense fund would still be considered campaign funds under the House Rules and thus would be subject to all the reporting requirements, limitations on contributions, and prohibited contributions which are applicable to campaign funds generally. Thus, for example, Members could not receive contributions to a legal defense fund from corporations, labor unions, national banks, public utility holding companies, foreign nationals, Government contractors, or anonymously, among other restrictions on campaign contributions.

Use of Excess Campaign Funds. Campaign funds which are in excess of amounts needed to defray the cost of campaigning are under the same restrictions as campaign funds in general, discussed in the preceding section. Thus, although Federal law provides generally that excess campaign funds may be used to defray the expenses of running a congressional office, among other lawful purposes, Members of the House, under the provisions of the House Rules, may generally use excess campaign funds solely for campaign purposes and may not convert excess campaign funds to personal use, or use such funds to defray official office expenses. Excess campaign funds also may not be used for defraying the cost of preparing or printing any mail material to be sent in a mass mailing under the Member's frank.

The statutory provision at 2 U.S.C. § 439a was amended in the 96th Congress to prohibit the use of excess campaign funds for personal purposes by anyone if the candidate involved was not a Member of Congress on January 8, 1980, the date the amendment was effective. Since House Rules prohibit such diversion to personal use, current Members, even those who were Members of Congress on January 8, 1980, would, like all other individuals, be subject to such a prohibition on diversion. However, *former* Members who have left Congress, but who were Members on January 8, 1980, would no longer be subject to House Rules on diversion of campaign funds to personal use, nor would they be covered by the statutory prohibition. Thus, it appears that such former Members, "grandfathered" out of the statutory prohibition, could use their excess campaign funds for any "lawful purpose".[49]

As noted by the Federal Election Commission in an advisory opinion, the statute by itself would allow the following:

> Under the Act and Commission regulations, excess campaign funds may be used for a variety of specific purposes

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[48] See H.R. Rpt. No. 95-1837, supra at 15.

[49] See Federal Election Commission Advisory Opinion 1978-94, December 15, 1978, as to use of excess campaign funds of deceased Member of Congress. Permissibility of converting campaign funds for personal purposes in such cases would now apparently depend on whether the deceased Member had been in Congress on January 8, 1980; see also Advisory Opinion 1980-41.

expressly made lawful: The funds may be used to defray any ordinary and necessary expenses incurred in connection with a candidate's duties as a Federal office holder; they may be contributed to any organization which is exempt from Federal taxation under 26 U.S.C. § 501(c); they may be contributed without limitation to any national, state, or local committee of a political party; or they may be used for "any other lawful purpose". Such funds may not be converted by any person to any personal use if the candidate involved was not a Member of Congress on January 8, 1980. See 2 U.S.C. § 439a and 11 C.F.R. 113.2.

The Commission's regulations provide that surplus funds from a prior campaign committee may be transferred to a current campaign committee of the same individual provided none of the funds transferred contain contributions which would be in violation of the Act. 11 C.F.R. 110.3(a)(2)(iv).[50]

Although the more restrictive House Rules do not allow for the official or personal use of campaign funds, and permit only political expenditures from such funds, under the provisions of both the Federal statute at 2 U.S.C. § 439a and the provisions of House Rules, excess campaign funds may be placed in a depository, accruing interest, for use in a future political campaign. It should be noted that in addition to the general reporting requirements concerning the disposition of campaign funds and the present balance of bank or savings and loan accounts,[51] tax liability of the political committee for the interest earned on campaign funds held in interest bearing accounts should be examined. The Select Committee on Ethics in the 95th Congress stated in its final report that the House Rules would also not bar the use of excess campaign funds for making contributions to any charitable organization described in section 170(c) of the Internal Revenue Code, or to a political party or another candidate, as permitted by the regulations of the Federal Election Commission.[52]

Campaign Activities by House Employees; Use of Congressional Staff on Campaigns. Staff employees of a Member, officer, or of a committee of the House are compensated from funds of the United States Treasury for the regular performance of official duties on behalf of the Member, officer, or committee, and therefore are not considered to be compensated from public funds for the performance of nonofficial, political campaign activities of a Member. The United States District Court for the District of Columbia, in a recent decision concerning the congressional franking privilege, noted Congress' recognition of the general principle that public funds are to be used for official congressional, and not for campaign, purposes: "It is clear from the record that Congress has recognized the basic principle that government funds should not be spent to help incumbents gain reelection."[53] Since legislative

[50] Federal Election Commission Advisory Opinion No. 1980-113, November 7, 1980, p. 2.
[51] See 2 U.S.C. § 434, FEC Regs section 104.2.
[52] H. Rpt. 95-1837, supra at pp. 16-17.
[53] *Common Cause* v. *Bolger*, No. 1887-73, Memorandum opinion (D.D.C. 1982).

branch employees do not come within the so-called "Hatch Act" [54], however, once a staff employee has completed the official duties assigned to him for which he is compensated from public funds, the employee is free to engage in campaign activities on his own free time. Additionally, there appear to be no rules or regulations in the House which would prohibit an employee from engaging in campaign activities while on annual leave or while on leave without pay status.

As to the congressional standards applicable to the duties of House employees, although no precise job descriptions are in force for clerk hire employees or for committee staffers, general ethical standards applicable to House employees require an employee to "give a full day's labor for a full day's pay" [55], and for a clerk hire employee to "perform duties commensurate with the compensation he receives." [56] Regulations of the House Administration Committee further require employing Members and officers to certify each month as to the "regular performance of official duties" of an employee as a requirement for compensation of that employee from public monies.[57] These standards indicate that a congressional employee must fulfill his official duties for which public compensation is received and may therefore not engage in campaign activities on behalf of a Member to the neglect of those duties. Traditionally, the designation of the specific duties of a Member's staff is within the discretion of the employing Member to best meet the Member's needs and those of his constituents. Further, it has been recognized that congressional staff may work irregular hours depending upon the hours the House stays in session, and thus a staffer's "free time" might occur in what is generally considered the conventional work day.[58] However, as to the exercise of discretion in assigning work to staffers, the United States Court of Appeals for the District of Columbia, in upholding the conviction of a Member of the House for using clerk hire appropriations to compensate individuals for non-congressional duties, agreed with expert testimony that it is "within a congressman's discretion to define the parameters of an employee's responsibilities as long as those responsibilities relate to the congressman's 'official and representative' duties." [59]

There may, of course, be some debate as to what "official" congressional duties entail. Some confusion may also be added by the labelling of a Member's official representational duties, such as constituent casework, news releases or newsletters to consitutuents, as "political in nature", as did the Supreme Court when it distinguished those "legitimate" official *representational* activities not covered by the Speech or Debate Clause from those official *legislative* activities which would be covered by Speech or Debate Clause immunity.[60] However, the general distinction between "offi-

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[54] See 5 U.S.C. § 7324.
[55] Code of Ethics for Government Service, 72 Stat. part II, B 12.
[56] House Rule XLIII(8).
[57] Regulations and Accounting Procedures for Allowances and Expenses of Committees, Members and Employees of the U.S. House of Representatives, parts II(C)(2)(a) and III(B)(2)(a), December 1980 ed.
[58] House Committee on Standards of Official Conduct Advisory Opinion No. 2, July 11, 1973.
[59] *United States* v. *Diggs*, 613 F.2d 988, at 997 (D.C. Cir. 1970), *cert. den.*, 446 U.S. 982 (1980).
[60] *United States* v. *Brewster*, 408 U.S. 501, at 512 (1972).

cial" representational and legislative duties on the one hand, and political "campaign" activities on the other, is a common and long-standing distinction in Congress, recognized specifically in such provisions as the franking law,[61] the tax treatment of political contributions,[62] the House Rule on unofficial office accounts,[63] and in the Federal Election Campaign Act.[64]

Although the distinction between "official" duties and political "campaign" activities is a common one in congressional matters, because of the various public, political and official roles which a Member may assume in connection with his position in Congress, there may be instances where this distinction is less clear than in others, or where one area may intrude into the other. As noted by the United States District Court in the franking case: "To state the obvious, it is simply impossible to draw and enforce a perfect line between the official and political business of Members of Congress" (*Common Cause* v. *Bolger,* supra). There has been some concern expressed over the potential, and arguably unavoidable, "overlap" or intrusion of some minimal campaign-related activities into official operations when dealing with the practical, day-to-day realities of the functioning of a Member's office. In responding to "official" inquiries from the press or inquiries from constituents, for example, congressional staffers may need to respond to questions dealing with issues or matters which relate to or bear upon a Member's political campaign as well as his official legislative and representative duties. Similarly, scheduling assistance and information from the Member's official staff may be requested by the campaign staff to assure that the Member's campaign schedule does not conflict with his official agenda. The House Committee on Standards of Official Conduct has recognized that in a practical sense it may not be possible to have an absolute separation of duties during the work day but that the "Committee expects Members of the House to abide by the general proposition" that staffers are to work on campaign related matters during their "free time" after the completion of their official duties. (Advisory Opinion No. 2, July 11, 1973).

The Advisory Opinion of the Standards of Official Conduct Committee states as follows concerning campaign activity by staffers:

> As to the allegation regarding campaign activity by an individual on the clerk hire rolls of the House it should be noted that due to the irregular time frame in which Congress operates, it is unrealistic to impose conventional work hours and rules on Congressional employees. At some times these employees may work more than double

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[61] See 39 U.S.C. § 3210(a)(1) and (2) compared to § 3210(a)(5)A) and (C); see also *Common Cause* v. *Bolger,* supra, as to discussion between official and campaign mailings.

[62] See 26 U.S.C. §§ 527 and 162, Revenue Ruling 80-331, where funds received by a political committee are tax exempt when used for campaign purposes but are taxable income to a Member who converts contributions to official congressional uses (with an off-setting business deduction allowed to be taken).

[63] House Rule XLV, see also H.R. Doc. 95-73, 95th Congress, 1st Sess. 16-17.

[64] 2 U.S.C. § 439a, see also *Buckley* v. *Valeo,* 424 U.S. 1 at 84, n. 112 (1976) where Supreme Court characterizes 2 U.S.C. § 434(d) as a "reasonable accommodation" of the distinction "between the legitimate and necessary efforts of legislators to communicate with their constituents" on the one hand, and "activities designed to win elections by legislators in their other role as politicians" on the other.

> the usual work week—at others, some less. These employees are expected to fulfill the clerical work the Member requires during the hours he requires and generally are free at other periods. If during the periods he is free, he voluntarily engages in campaign activity, there is no bar to this. There will, of course, be differing views as to whether the spirit of this principle is violated but this Committee expects Members of the House to abide by the general proposition.

In addition to congressional ethical standards and rulings, there may be potential legal implications if salaries are claimed from public appropriations for individuals merely for their performance of non-official, campaign services on behalf of a Member. Although recent Federal court decisions have shown that the question of civil liability for such conduct by a Member of the Senate might not be justiciable under the specific provisions of the Federal False Claims Act,[65] criminal liability might be found where a scheme to compensate individuals from public monies merely for campaign services rendered to a Member is considered to constitute a fraud against the government.[66] It should be noted that the Department of Justice obtained a criminal indictment against a former Member of the House of Representatives charging that the former Member while in Congress defrauded the United States by placing 11 persons on his congressional payroll to pay them for operating and staffing various campaign headquarters in the former Member's reelection campaign.[67] On February 13, 1979, the former Member pleaded guilty to mail fraud and tax evasion counts stemming from these charges.

Political Contributions by House Employees. Employees of the Federal Government are prohibited from making political contributions to a Member of Congress or another Federal official who is the employer or the employing authority of the contributor.[68] Prior to the Federal Election Campaign Act Amendments of 1979, amending and renumbering the restrictions on political contributions now at 18 U.S.C. § 603, congressional employees and other employees of the Federal Government were prohibited from making political contributions to any other Federal officer, employee, or Member of Congress, regardless of whether such individual was the contributor's employer or employing authority.[69] Although

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[65] See 31 U.S.C. §§ 3729, 3730; *United States ex rel. Joseph* v. *Cannon*, 642 F.2d 1373 (D.C. Cir. 1981), *cert. den.* 102 S. Ct. 1630 (1982).

[66] See *United States* v. *Clark*, Criminal No. 78-207 (W.D. Pa. 1978); note also *Joseph* v. *Cannon, supra* at 1385; and *United States* v. *Diggs*, 613 F.2d 988 (D.C. Cir. 1979), *cert. den.*, 446 U.S. 982 (1980), where court found a fraudulent scheme in using staff appropriations "for purposes other than those intended by the appropriation and duly certified by the congressman" (Id. at 997).

[67] *United States* v. *Clark, supra;* see report on indictment, *Washington Post*, September 6, 1978, p. A6.

[68] 18 U.S.C. § 603, as amended by P.L. 96-187.

[69] See 18 U.S.C. § 607, 1976 Code Ed., note also letter from Attorney General P. McGranery, October 14, 1953, to House Judiciary Subcommittee Chairman Frank L. Chelf concerning contributions made by staff of Representative Reva Beck Bosone, ". . . technically, Mrs. Bosone is guilty under one section, the contributors under another", Congressional Quarterly News Features, 1952, p. 1021: Working Papers of the National Commission on Reform of Federal Criminal Laws, Vol. II, pp. 818-819, see also Final Report, p. 165; Senate Report No. 95-500, 95th Congress, 1st Session. Report of the Committee on Rules and Administration, "Review of Laws Re-

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in practice there was not strict enforcement of the statute,[70] such a restriction on employees had been on the statute books in some form since the late 1800's.[71] (Section 14 of the Pendleton Act, 22 Stat. 403).

Under the current statutory provision now codified at 18 U.S.C. § 603, however, congressional employees are only prohibited from making political contributions to their "boss", that is, their employer or employing authority. As explained in the House Report on the Federal Election Campaign Act Amendments of 1979, P.L. 96-187; to accompany H.R. 5010, 96th Congress, political contributions would be barred from a Member's staff to that Member, and from committee staff to the chairman of that committee. Persons employed by the minority of a committee are also barred from contributing to the ranking minority member of the committee, as well as the chairman:

> Section 603 has been amended to allow voluntary contributions from federal employees to other federal employees. If, however, the individual is employed by a Senator, Representative, or Delegate or Resident Commissioner to Congress that employee cannot contribute to his or her employer although voluntary contributions to other Members of Congress would be allowed. An individual employed by a congressional committee cannot contribute to the chairman of that particular committee. If the individual is employed by the minority that individual cannot contribute to the ranking minority member of the committee or the chairman of the committee.[72]

In addition to permissible contributions by congressional staff to a candidate, including a Member of Congress, who is not the employer or employing authority of the staffer, congressional employees may contribute to a committee or an organization which is not an "authorized committee" of the staffer's employer or employing authority. An "authorized committee" of a candidate is one which is designated in writing by the candidate to accept contributions and make expenditures on his behalf,[73] and includes the candidate's principal campaign committee. Generally, under Federal campaign law, a multi-candidate committee, that is, one which supports more than one Federal candidate, may not be designated as an "authorized committee" of a candidate.[74] Therefore, congressional staffers may generally make political contributions to multi-

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lated to Contributions Made by or Solicited from Senate Officers and Employees", pp. 5-6; Federal Election Commission, Commissioner Memorandum No. 1434, from William Oldaker, General Counsel, p. 2, August 25, 1977; see also note #70, below, concerning contributions by Senate employees as employees of the Federal Government.

[70] Letter from Henry E. Peterson, Assistant Attorney General, Criminal Division, by Thomas J. McTiernan, Chief of the Fraud Section, United States Department of Justice, August 12, 1974.

[71] Section 14 of the Pendleton Act, 22 Stat. 403; similar restrictions on some Federal employees making political contributions to other employees, and receiving such contributions from other employees, have been upheld against constitutional challenges concerning interference with employee's political rights *(Ex. Parte Curtis,* 106 U.S. 371 [1882], and *United States* v. *Wurzbach,* 280 U.S. 396 [1930]), as have those restrictions on general campaign activities by executive branch employees who come within the "Hatch Act," (*United States Civil Service Commission* v. *National Associations of Letter Carriers, AFL-CIO,* 413 U.S. 458 [1973]).

[72] House Report No. 96-422, 96th Congress, 1st Session, p. 26.

[73] See 18 U.S.C. § 603(b), 2 U.S.C. § 432(e)(1), as amended by P.L. 96-187.

[74] 2 U.S.C. § 432(e)(3).

candidate political committees, such as the Democratic or Republican Senatorial or Congressional Campaign Committees or the Republican or Democratic National Committee, even though some of the proceeds received by such committees may eventually be expended for the benefit of the contributor's employer. In making such contributions to multi-candidate committees, however, the staffer should not specifically "earmark" the contribution for use only in the campaign of his employer, since such "earmarking" of a contribution may be considered as a contribution from the staffer/contributor to that Member/candidate,[75] and thus a potential violation of the criminal prohibition on contributions to one's employer or employing authority.

For purposes of the current restrictions on contributions by congressional staffers, the term "contribution" is defined as in 2 U.S.C. §431 (section 301(8) of the Federal Election Campaign Act, as amended). Specifically excluded from the term "contribution" is the value of voluntary services by an individual provided a candidate or committee (See sec. 301(8)(B)(i) of the FECA, as amended). Thus, a congressional staffer may voluntarily provide his services, his own free time, and his assistance to a Member's campaign, even his employer's campaign, without violating the prohibition of making campaign "contributions" to one's employer.

The definition of the term "contribution" under Federal campaign law also demonstrates that the prohibition goes only to the contribution of things of value in connection with a *Federal* election campaign (2 U.S.C. §431, section 301(8)(A)(i) of the FECA as amended). Thus, a congressional staffer may make a political contribution to any officer or employee of the Federal Government for purposes of influencing the election or defeat of a candidate to State or local office.

Fundraising dinners and testimonials. Fundraising dinners and testimonials are common methods for candidates to raise money for an upcoming political campaign, or to pay off previous campaign debts. The money paid for a ticket to such an event is generally considered under Federal law as a campaign contribution from the purchaser of the ticket to the candidate on whose behalf the event is being held.[76]

Since the purchase of a ticket to a fundraiser or testimonial would generally be considered a political contribution to the candidate involved, a congressional employee should not purchase such a ticket or contribute money to a fundraiser or testimonial given for his employer or employing authority, under the provisions of 18 U.S.C. § 603, as amended.

Although a congressional employee should not attend such a fundraiser or testimonial as a paying guest, the employee could apparently attend as a nonpaying guest without violating provisions against making political contributions to one's employer. Furthermore, a congressional employee may also volunteer his or her own free time to work on the fundraiser or testimonial for the Mem-

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[75] See Regulations of the Federal Election Commission, 11 C.F.R. §110.6.

[76] See 2 U.S.C. §434, as amended, note explanation in H. Rpt. 96–422, supra at p. 16, to accompany FECA Amendments of 1979; see Internal Revenue Service Ruling 74–412 (TIR 1191), 1972–2 CB 5; also House Rule XXXIII, paragraph 7.

ber's campaign since voluntary services are not considered "contributions" under Federal campaign law.[77]

Campaign Activity in a Federal Building. When congressional employees become involved in campaign financing activities, an important consideration is a provision now codified at 18 U.S.C. § 607, as amended by P.L. 96-187, January 8, 1980, which restricts the solicitation or receipt of political contributions in Federal buildings or other Federal facilities.

Although prohibiting the receipt or solicitation of campaign contributions in a Federal building, the amended statute recognizes that it is often unavoidable that unsolicited campaign contributions will be received through the mail or a contribution by a supporter will be tendered in person, within a congressional office. When this situation occurs the statute specifically provides that a staff employee of a Member of Congress may accept the contribution as a transmittal for subsequent forwarding, within seven days of receipt, to an appropriate campaign organization outside of the congressional office.[78]

As for the solicitation of contributions, although this statute has thus far not been specifically construed by the courts to prohibit the solicitation of campaign contributions from a congressional office directed to the public at large by letter or telephone, such activities would be barred by other provisions relating to appropriations and official allowances. The criminal statute at § 607 has historically been construed to prohibit the solicitation of contributions from a Federal employee while such person is within a Federal building. The focus of the prohibition, then, has been directed to the location of the person solicited, rather than the location from which the solicitation originated. As noted by the Supreme Court in interpreting the forerunner of § 607, "the solicitation was in the place where the letter was received." [79] Under this interpretation, section 607 would arguably not prohibit solicitations from a congressional office to the public at large so long as the persons solicited were not in a Federal building.

However, other provisions of the United States Code, as well as regulations governing certain allowances in the House, specify that amounts provided from appropriated funds for telephone, mail, office space, stationery, etc., are to be used for "official" purposes.[80] These provisions would apparently bar the use or conversion of such supplies or facilities for campaign purposes, rather than official congressional purposes. As noted in Chapter 3 of this Manual the use of official allowances, or supplies or goods secured by such allowances, for other than official purposes might possibly subject a Member to a number of legal liabilities concerning false claims, fraud, or conversion.

List of Prohibited Campaign Activities. Following is a brief listing of specific statutory prohibitions relating to campaign activities by an employee or Member of the House. This list may be used to

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[77] Section 301(8)(B)(i) of the FECA, as amended.
[78] 18 U.S.C. § 607(b).
[79] *United States* V. *Thayer*, 209 U.S. 39, 44 (1908).
[80] See discussion of "Official Allowances", Chapter 3 of this report.

provide a quick reference to activities which should raise so-called "red flags" as far as Federal statutory law is concerned.

An employee or Member of the House *may not:*

(1) Promise to use support or influence to obtain Federal employment for anyone in return for a political contribution (18 U.S.C. § 211).

(2) Deprive, attempt to deprive, or threaten to deprive anyone of employment or any other benefit, provided for or made possible by an Act of Congress appropriating relief funds, because of that person's political affiliation (18 U.S.C. § 246, as added by P.L. 94-453).

(3) Make or offer to make an expenditure to any person either to vote or withhold one's vote or to vote for or against any candidate in a Federal election (18 U.S.C. § 597).

(4) Solicit, accept, or receive an expenditure in consideration of his vote or the withholding of his vote in a Federal election (18 U.S.C. § 597).

(5) Use any appropriation by Congress for work relief, relief, or for increasing employment, or exercise any authority conferred by any appropriations act for the purpose of interfering with, restraining, or coercing any individual in the exercise of his right to vote (18 U.S.C. § 598).

(6) If a candidate, directly or indirectly, promise or pledge the appointment of any person to any public or private position or employment, for the purpose of procuring support in one's candidacy (18 U.S.C. § 599).

(7) Promise employment or any other benefit provided for or made possible by any Act of Congress as a reward for political activity or support (18 U.S.C. § 600).

(8) Cause or attempt to cause anyone to make a political contribution by means of denying or threatening to deny any governmental employment or benefit provided for or made possible, in whole or in part, by any act of Congress (18 U.S.C. § 601, as amended by P.L. 94-543).

(9) Solicit political contributions from any other Federal employee or from any person receiving salary or compensation for services from money derived from the United States Treasury (18 U.S.C. § 602, as amended by P.L. 96-187).

(10) Make a political contribution to any Member of the House who is the employer or the employing authority of the staff employee (18 U.S.C. § 603, as amended by P.L. 96-187).

(11) Solicit or receive political contributions from persons known to be entitled to or to be receiving relief payments under any act of Congress (18 U.S.C. § 604).

(12) Furnish, disclose, or receive for political purposes the names of persons receiving relief payments under any act of Congress (18 U.S.C. § 605).

(13) Intimidate any "officer or employee" mentioned in 18 U.S.C. 602 to secure political contributions (18 U.S.C. § 606).

(14) Solicit or receive political contributions in a Federal building, other than unsolicited contributions coming into a Federal building which are transferred to a political committee within seven days (18 U.S.C. § 607, as amended by P.L. 96-187).

(15) Knowingly accept a contribution in excess of limitations under Federal law of $1,000 to a candidate from any person, or

$5,000 to a candidate from multicandidate committees (2 U.S.C. § 441a(a), added by P.L. 94-283).

(16) Accept or receive any political contribution from the organizational or treasury funds of a national bank, corporation, or labor organization (2 U.S.C. § 441b).

(17) Knowingly solicit contributions from Government contractors (2 U.S.C. § 441c).

(18) Make an expenditure for any general public political advertising which anonymously advocates the election or defeat of a clearly identified candidate (2 U.S.C. § 441d).

(19) Solicit, accept, or receive a contribution from a foreign national (2 U.S.C. § 441e).

(20) Knowingly accept a contribution made by one person in the name of another person (2 U.S.C. § 441f).

(21) Fraudulently misrepresent oneself as speaking or acting on behalf of a candidate (2 U.S.C. § 441h).

(22) To the extent that an individual may make political contributions or expenditures as discussed above, the individual may not:

(a) Make a cash contribution in excess of $100 (2 U.S.C. § 441g);

(b) Make contributions in excess of $1,000 per election to any candidate, $5,000 per calendar year to political committees and $20,000 to national party committees, or make contributions aggregating over $25,000 per calendar year (2 U.S.C. § 441a(a));

(c) Make a contribution in the name of another (2 U.S.C. § 441f);

(d) Make contributions or expenditures in excess of $100 other than by contribution to a committee or candidate, without filing a report with the Federal Election Commission (2 U.S.C. § 434(e)).

APPENDIX

TEXT OF SELECTED RULES, REGULATIONS, OPINIONS, AND STATUTES RELATING TO CONDUCT STANDARDS

1. Rules of the House of Representatives

RULE XLIII

CODE OF OFFICIAL CONDUCT

There is hereby established by and for the House of Representatives the following code of conduct, to be known as the "Code of Official Conduct":

1. A Member, officer, or employee of the House of Representatives shall conduct himself at all times in a manner which shall reflect creditably on the House of Representatives.

2. A Member, officer, or employee of the House of Representatives shall adhere to the spirit and the letter of the Rules of the House of Representatives and to the rules of duly constituted committees thereof.

3. A Member, officer, or employee of the House of Representatives shall receive no compensation nor shall he permit any compensation to accrue to his beneficial interest from any source, the receipt of which would occur by virtue of influence improperly exerted from his position in the Congress.

4. A Member, officer, or employee of the House of Representatives shall not accept gifts (other than personal hospitality of an individual or with a fair market value of $35 or less) in any calendar year aggregating $100 or more in value, directly or indirectly, from any person (other than from a relative of his) having a direct interest in legislation before the Congress or who is a foreign national (or agent of a foreign national). Any person registered under the Federal Regulation of Lobbying Act of 1946 (or any successor statute), any officer or director of such registered person, and any person retained by such registered person for the purpose of influencing legislation before the Congress shall be deemed to have a direct interest in legislation before the Congress.

5. A Member, officer, or employee of the House of Representatives shall accept no honorarium for a speech, writing for publication, or other similar activity, from any person, organization, or corporation in excess of the usual and customary value for such services.

6. A Member of the House of Representatives shall keep his campaign funds separate from his personal funds. He shall convert no campaign funds to personal use in excess of reimbursement for legitimate and verifiable prior campaign expenditures and he shall

expend no funds from his campaign account not attributable to bona fide campaign purposes.

7. A Member of the House of Representatives shall treat as campaign contributions all proceeds from testimonial dinners or other fundraising events.

8. A Member of the House of Representatives shall retain no one from his clerk hire allowance who does not perform duties commensurate with the compensation he receives.

9. A Member, officer, or employee of the House of Representatives shall not discharge or refuse to hire any individual, or otherwise discriminate against any individual with respect to compensation, terms, conditions, or privileges of employment, because of such individual's race, color, religion, sex, or national origin.

10. A Member of the House of Representatives who has been convicted by a court of record for the commission of a crime for which a sentence of two or more years' imprisonment may be imposed should refrain from participation in the business of each committee of which he is a member and should refrain from voting on any question at a meeting of the House, or of the Committee of the Whole House, unless or until judicial or executive proceedings result in reinstatement of the presumption of his innocence or until he is reelected to the House after the date of such conviction.

11. A Member of the House of Reperesentatives shall not authorize or otherwise allow a non-House individual, group, or organization to use the words "Congress of the United States", "House of Representatives", or "Official Business", or any combination of words thereof, on any letterhead or envelope.

As used in this Code of Official Conduct of the House of Representatives—(a) the terms "Member" and "Member of the House of Representatives" include the Resident Commissioner from Puerto Rico and each Delegate to the House; and (b) the term "officer or employee of the House of Representatives" means any individual whose compensation is disbursed by the Clerk of the House of Representatives

For the purposes of clause 4 of this Code of Official Conduct—

(1) The term "relative" means, with respect to any Member, officer, or employee of the House of Representatives, an individual who is related as father, mother, son, daughter, brother, sister, uncle, aunt, first cousin, nephew, niece, husband, wife, grandfather, grandmother, grandson, granddaughter, father-in-law, mother-in-law, son-in-law, daughter-in-law, brother-in-law, sister-in-law, stepfather, stepmother, stepson, stepdaughter, stepbrother, stepsister, half brother, half sister, or who is the grandfather or grandmother of the spouse of the person reporting.

(2) The term "foreign national" means an individual who is not a citizen of the United States and who is not lawfully admitted for permanent residence.

RULE XLV*

PROHIBITION OF UNOFFICIAL OFFICE ACCOUNTS

1. On or after January 3, 1978, no Member may maintain or have maintained for his use an unofficial office account.

2. After the date of adoption of this rule, no funds may be paid into any unofficial office account.

3. For purposes of this rule—

(a) the term "unofficial office account" means an account or repository into which funds are received for the purposes of defraying otherwise unreimbursed expenses allowable under section 162(a) of the Internal Revenue Code of 1954 as ordinary and necessary in the operation of a congressional office, and includes any newsletter fund referred to in section 527(g) of the Internal Revenue Code of 1954; and

(b) the term "Member" means any Member of, Delegate to, or Resident Commissioner in, the House of Representatives.

RULE XLVI*

LIMITATIONS ON THE USE OF THE FRANK

1. Any franked mail which is mailed by a Member under section 3210(d) of title 39, United States Code, shall be mailed at the equivalent rate of postage which assures that such mail will be sent by the most economical means practicable.

2. After December 31, 1977, the total number of pieces of mail which may be mailed as franked mail under section 3210(d) of title 39, United States Code, during any calendar year by a Member entitled to mail franked mail under this subsection may not exceed an amount equal to six multiplied by the number of addresses to which such mail may be delivered, in accordance with paragraph (4) of section 3210(d) of title 39, United States Code, in the area from which such Member was elected. Any mail matter which relates solely to a notice of appearance or a scheduled itinerary of a Member in the area from which such Member was elected shall not count against the limitation set forth in the preceding sentence.

3. Any Member entitled to mail franked mail under section 3210(d) of title 39, United States Code, shall, before making any such mailing, submit a sample or description of the mail matter involved to the House Commission on Congressional Mailing Standards for an advisory opinion as to whether such proposed mailing is in compliance with the provisions of such section.

4. Any mass mailing which otherwise is frankable by a Member under the provisions of section 3210(e) of title 39, United States Code, shall not be frankable unless the cost of preparing and printing such mass mailing is defrayed exclusively from funds made available in any appropriations Act.

5. In the case of any Representative in the House of Representatives, other than a Representative at Large, who is a candidate for any statewide public office, any mass mailing shall not be frankable under section 3210 of title 39, United States Code, when the

*This rule was adopted by the House on March 2, 1977 (H. Res. 287, 95th Cong.).

same is delivered to any address which is not located in the area constituting the congressional district from which any such individual was elected.

6. In the case of any Member, any mass mailing shall not be frankable under section 3210 of title 39, United States Code, when the same is mailed less than sixty days immediately before the date of any primary or general election (whether regular, special, or runoff) in which such Member is a candidate for public office.

7. For purposes of this rule, the term "Member" means any Member of the House of Representatives, a Delegate to the House of Representatives, or the Resident Commissioner in the House of Representatives.

RULE XLVII*

LIMITATIONS ON OUTSIDE EARNED INCOME

1. (a) Except as provided by paragraph (b), no Member may, in any calendar year beginning after December 31, 1978, have outside earned income attributable to such calendar year which is in excess of 30 per centum of the aggregate salary as a Member paid to the Member during such calendar year.

(b) In the case of any individual who becomes a Member during any calendar year beginning after December 31, 1978, such Member may not have outside earned income attributable to the portion of that calendar year which occurs after such individual becomes a Member which is in excess of 30 per centum of the aggregate salary as a Member paid to the Member during such calendar year.

2. For purposes of clause 1, honoraria shall be attributable to the calendar year in which payment is received.

3. For the purposes of this rule—

(a) The term "Member" means any Member of the House of Representatives, a Delegate to the House of Representatives, or the Resident Commissioner in the House of Representatives.

(b) The term "honorarium" means a payment of money or any thing of value to a Member for an appearance, speech, or article, by the Member; but there shall not be taken into account for purposes of this paragraph any actual and necessary travel expenses incurred by the Member to the extent that such expenses are paid or reimbursed by any other person, and the amount otherwise determined shall be reduced by the amount of any such expenses to the extent that they are not paid or reimbursed.

(c) The term "travel expenses" means, with respect to a Member, the cost of transportation, and the cost of lodging and meals while away from his residence or the greater Washington, District of Columbia, metropolitan area.

(d) The term "outside earned income" means, with respect to a Member, wages, salaries, professional fees, honorariums, and other amounts (other than copyright royalties) received or to

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*This rule was adopted by the House on March 2, 1977 (H. Res. 287, 95th Cong.) and amended on January 5, 1979 (H. Res. 5, 96th Cong.) and on December 15, 1981 (H. Res. 305, 97th Cong.).

be received as compensation for personal services actually rendered but does not include—

(1) the salary of such Member as a Member;

(2) any compensation derived by such Member for personal services actually rendered prior to the effective date of this rule or becoming such a Member, whichever occurs later;

(3) any amount paid by, or on behalf of, a Member to a tax-qualified pension, profit-sharing, or stock bonus plan and received by such Member from such a plan; and

(4) in the case of a Member engaged in a trade or business in which the Member or his family holds a controlling interest and in which both personal services and capital are income-producing factors, any amount received by such Member so long as the personal services actually rendered by the Member in the trade or business do not generate a significant amount of income.

Outside earned income shall be determined without regard to any community property law.

RULE VIII*

DUTIES OF THE MEMBERS

1. Every Member shall be present within the Hall of the House during its sittings, unless excused or necessarily prevented; and shall vote on each question put, unless he has a direct personal or pecuniary interest in the event of such question.

2. Pairs shall be announced by the Clerk immediately before the announcement by the Chair of the result of the vote, by the House or Committee of the Whole from a written list furnished him, and signed by the Member making the statement to the Clerk, which list shall be published in the Record as a part of the proceedings, immediately following the names of those not voting. However, pairs shall be announced but once during the same legislative day.

3. (a) A Member may not authorize any other individual to cast his vote or record his presence in the House or Committee of the Whole.

(b) No individual other than a Member may cast a vote or record a Member's presence in the House or Committee of the Whole.

(c) A Member may not cast a vote for any other Member or record another Member's presence in the House or Committee of the Whole.

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*Paragraph 3 of Rule VIII was adopted by the House on January 5, 1981 (H. Res. 5, 97th Congress). See also H. Rept. 96-991, Study and Analysis of the Voting Anomalies In The House of Representatives on May 14 and July 30, 1979.

2. Regulations of the House Committee on Standards of Official Conduct: Regulations for the Acceptance of Decorations and Gifts, Including Travel or Expenses for Travel, by Members, Officers, or Employees of the House of Representatives From Foreign Governments

1. AUTHORITY

The Committee on Standards of Offical Conduct is authorized to issue regulations on this subject by 5 U.S.C. §§ 7342(g), 7342(a)(6), as amended by P.L. 95–105, commonly known as the Foreign Gifts and Decorations Act.

2. PURPOSE

The purpose of these regulations is to establish standards for the acceptance and disclosure of decorations, gifts of more than minimal value, and gifts of travel or expenses for travel taking place entirely outside the United States tendered by foreign governments to Members, officers, and employees of the House of Representatives.

3. GENERAL STANDARDS

(a) The United States Constitution (Article I, Section 9, clause 8) prohibits a Federal official from accepting gifts of any kind whatever from a foreign government without the consent of the Congress.

(b) The Foreign Gifts and Decorations Act (5 U.S.C. 7342) prohibits an officer or employee of the Government from requesting or otherwise encouraging the tender of a gift or decoration from a foreign government, and prohibits the acceptance of such gifts other than in accordance with the provisions of that Act as implemented for Members, officers, and employees of the House by these regulations.

(c) Rule XLIII, clause 4, of the Rules of the House of Representatives prohibits a Member, officer, or employee of the House from accepting gifts (other than personal hospitality of an individual or gifts with a fair market value of $35 or less) in any calendar year aggregating over $100 from a foreign national not acting as a representative of a foreign government. Food, lodging, transportation, and entertainment provided on an official basis by a foreign government to Members of the House of Representatives are not subject to the provisions of House Rule XLIII, clause 4, as such matters are deemed controlled by Constitutional and statutory prohibitions.

4. DEFINITIONS

As used in this section and sections 2, 3, 5, and 6 of these regulations:

(a) "Member, officer, or employee of the House of Representatives" includes the spouse of such individual (unless such individual and spouse are separated) or a dependent of such individual (as defined in section 152 of the Internal Revenue Code);

(b) "foreign government" means—

(i) any unit of foreign governmental authority, including any foreign municipal, local, State, and national government;

(ii) any international or multinational organization whose membership is composed of any unit of foreign government described in subparagraph (i); and

(iii) any agent or representative of any such unit or such organization, while acting as such;

(c) "decoration" means an order, device, medal, badge, insignia, emblem or award tendered by, or received from a foreign government; and

(d) "gift" means a tangible or intangible present (other than a decoration) tendered by, or received from, a foreign government.

5. CONSENT OF CONGRESS FOR THE ACCEPTANCE OF DECORATIONS

The Congress has consented (5 USC 7342(d)) to the accepting, retaining, and wearing by a Member, officer, or employee of the House of Representatives of a decoration tendered in recognition of active field service in time of combat operations or awarded for other outstanding or unusually meritorious performance, subject to the approval of the Committee on Standards of Official Conduct.

(a) *Decorations of minimal intrinsic value.*—Decorations presented to Members, officers, or employees of the House tendered by or received from a foreign government may be accepted by such Member, officer, or employee where the intrinsic value of the decoration is of minimal value, without prior approval of the Committee on Standards of Offical Conduct. Decorations of minimal intrinsic value are defined as those having a retail value in the United States of $140 or less.

(b) *Decorations of more than minimal intrinsic value.*—Unless acceptance is specifically approved by the Committee on Standards of Official Conduct, decorations of more than minimal value, if not promptly returned, are deemed to have been accepted on behalf of the United States and shall become the property of the United States. Within 60 days after acceptance of such a decoration, the decoration must be turned over to the Clerk of the House of Representatives for disposal; or, with the approval of the Committee on Standards of Official Conduct, deposited with the Committee for official use. At the time such decoration is turned over to the Clerk by a Member, officer, or employee, such individual must file a disclosure statement concerning such decoration with the Committee, detailing information as provided in section 7 of these regulations.

6. CONSENT OF CONGRESS FOR THE ACCEPTANCE OF GIFTS

Congress has consented to the acceptance of certain gifts, or gifts under particular circumstances, from foreign governments by officers or employees of the Government, including Members, officers, and employees of the House:

(a) *Gifts of minimal value.*—Members, officers, and employees of the House may accept gifts of minimal value from foreign governments tendered and received as a souvenir or mark of courtesy. Gifts of minimal value are defined as those having a retail value in the United States of $140 or less.

(b) *Gifts of more than minimal value where refusal may cause offense or embarrassment.*—A Member, officer, or employee may accept tangible gifts of more than minimal value when refusal would be deemed likely to cause offense or embarrassment or otherwise adversely affect United States foreign relations. However, any such tangible gift received and not promptly returned is deemed to have been accepted on behalf of the United States, and upon acceptance becomes property of the United States. Within 60 days after accepting such a gift, the gift must be turned over to the Clerk of the House of Representatives for disposal, or, with the approval of the Committee on Standards of Official Conduct, deposited with the Committee for official use. At the time such gift is turned over to the Clerk by a Member, officer, or employee, such individual must file a disclosure statement concerning such gift with the Committee, detailing information as provided in section 7(a) of these regulations. Intangible gifts of more than minimal value may only be accepted in accordance with sections 6(c) and (e) of these regulations.

(c) *Education scholarship or medical treatment.*—Members, officers, or employees of the House may accept a gift of more than minimal value from a foreign government when the gift is in the nature of an educational scholarship or medical treatment.

(d) *Foreign educational or cultural exchange.*—Acceptance of assistance from a foreign government for participation in foreign exchange or visitors programs by Federal officers or employees is consented to by Congress in certain instances outlined in 22 U.S.C. 2458a, the Mutual Educational and Cultural Exchange Act. Assistance or grants received under that act are not considered "gifts" under these regulations.

(e) *Travel or expenses for travel outside of the United States.*—A Member, officer, or employee of the House may accept gifts of travel or expenses for travel taking place entirely outside of the United States offered by a foreign government when such travel or expenses for travel relate directly to the official duties of the Member, officer, or employee. Gifts of travel or expenses for travel include food, lodging, transportation and entertainment relating to the official duties of the Member, officer, or employee. This provision allows a Member, officer, or employee to take advantage of opportunities such as certain onsite inspection or fact findings while in a foreign country. A spouse or dependent of a Member, officer, or employee of the House may accept such travel or expenses for travel when accompanying the Member, officer, or employee of the House. Such travel or expenses for travel may not be accepted merely for the personal benefit, pleasure, enjoyment or financial enrichment of the individual or individuals involved. The acceptance of any such travel or expenses for travel shall be reported within 30 days after acceptance to the Committee on Standards of Official Conduct, providing information required in section 7(b) of these regulations. For the purposes of these regulations, travel or expenses for travel are deemed accepted upon departure from the donor country.

7. REPORTS AND DISCLOSURE

Any gift provided to a spouse or dependent should be considered to be a gift provided to the Member, officer, or employee and therefore must be disclosed by such Member, officer, or employee.

For the purposes of these regulations, any decoration presented by a foreign government to the spouse or a dependent of a Member, officer, or employee of the House is considered to be presented to the Member, officer, or employee when it is apparent the decoration would not have been offered but for the recipient's relation to the Member, officer, or employee, and therefore must be disclosed by such Member, officer, or employee.

An appraisal of tangible gifts or decorations, if necessary, may be obtained through the Clerk of the House of Representatives.

(a) *Tangible gifts and decorations.*—At the time of depositing a tangible gift or decoration of more than minimal value accepted by a Member, officer, or employee pursuant to section 5(b) or 6(b) of these regulations, the Member, officer, or employee shall report to the Committee the following information:

(i) the name and position of the reporting individual and the recipient;

(ii) a brief description of the gift or decoration and the circumstances justifying acceptance;

(iii) the estimated value in the United States at the time of acceptance;

(iv) the date of acceptance of the gift or decoration;

(v) the identity, if known, of the foreign government and the name and position of the individual who presented the gift or decoration;

(v) disposition or current location of the gift or decoration.

(b) *Other gifts.*—Within 30 days after acceptance of gifts of travel pursuant to section 6(e) of these regulations, the Member, officer, or employee shall report to the Committee the following information:

(i) the name and position of the reporting individual;

(ii) a brief description of the gift and the circumstances justifying acceptance; and

(iii) the identity, if known, of the foreign government and the name and position of the individual who presented the gift.

8. PUBLIC INSPECTION

Reports filed under these regulations as promulgated under 5 U.S.C. 7342 shall be maintained by the Committee on Standards of Official Conduct and made available for public inspection at reasonable hours. Not later then January 31, 1979, and January 31 of each succeeding year, the Committee on Standards of Official Conduct will compile a listing of all statements filed during the preceding year and will transmit such listing to the Secretay of State for publication in the Federal Register.

Reports filed with the Committee under these regulations will be maintained for public inspection for a period of 7 years following transmittal to the Secretary of State.

3. Advisory Opinions of the House Committee on Standards of Official Conduct

A. Advisory Opinion No. 1, Issued Janaury 26, 1970

(On the Role of a Member of the House of Representatives in Communicating With Executive and Independent Federal Agencies*)

REASON FOR ISSUANCE

A number of requests have come to the Committee for its advice in connection with actions a Member of Congress may properly take in discharging his representative function with respect to communications on constituent matters. This advisory opinion is written to provide some guidelines in this area in the hope they will be of assistance to Members.

BACKGROUND

The first Article in our Bill of Rights provides that "Congress shall make no law . . . abridging the . . . right of the people . . . to petition the government for a redress of grievances." The exercise of this Right involves not only petition by groups of citizens with common objectives, but increasingly by individuals with problems or complaints involving their personal relationships with the Federal Government. As the population has grown and as the Government has enlarged in scope and complexity, an increasing number of citizens find it more difficult to obtain redress by direct communication with administrative agencies. As a result, the individual turns increasingly to his most proximate connection with his Government, his representative in the Congress, as evidenced by the fact that congressional offices devote more time to constitutent requests than to any other single duty.

The reasons individuals sometimes fail to find satisfaction from their petitions are varied. At the extremes, some grievances are simply imaginary rather than real, and some with merit are denied for lack of thorough administrative consideration.

Sheer numbers impose requirements to standardize responses. Even if mechanical systems function properly and timely, the stereotyped responses they produce suggest indifference. At best, responses to grievances in form letter or by other automated means leave much to be desired.

Another factor which may lead to petitioner dissatisfaction is the occasional failure of legislative language, or the administrative interpretation of it, to cover adequately all the merits the legislation intended. Specific cases arising under these conditions test the legislation and provide a valuable oversight disclosure to the Congress.

Further, because of the complexity of our vast federal structure, often a citizen simply does not know the appropriate office to petition.

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*Subsequent legislation, regulations or rules may affect part or all of this advisory opinion (see 5 U.S.C. sec. 557(d) relating to prohibited ex parte communications to administrative agencies).

For these, or similar reasons, it is logical and proper that the petitioner seek the assistance of his Congressman for an early and equitable resolution of his problem.

REPRESENTATIONS

This Committee is of the opinion that a Member of the House of Representatives, either on his own initiative or at the request of a petitioner, may properly communicate with an Executive or Independent Agency on any matter to:

request information or a status report;

urge prompt consideration;

arrange for interviews or appointments;

express judgments;

call for reconsideration of an administrative response which he believes is not supported by established law, Federal Regulation or legislative intent;

perform any other service of a similar nature in this area compatible with the criteria hereinafter expressed in this Advisory Opinion.

PRINCIPLES TO BE OBSERVED

The overall public interest, naturally, is primary to any individual matter and should be so considered. There are also other self-evident standards of official conduct which Members should uphold with regard to these communications. The Committee believes the following to be basic:

1. A Member's responsibility in this area is to all his constituents equally and should be pursued with diligence irrespective of political or other considerations.

2. Direct or implied suggestion of either favoritism or reprisal in advance of, or subsequent to, action taken by the agency contacted is unwarranted abuse of the representative role.

3. A Member should make every effort to assure that representations made in his name by any staff employee conform to his instruction.

CLEAR LIMITATIONS

Attention is invited to United States Code, Title 18, Sec. 203(a) which states in part: "Whoever . . . directly or indirectly receives or agrees to receive, or asks, demands, solicits, or seeks, any compensation for any services rendered or to be rendered either by himself or another

(1) at a time when he is a Member of Congress . . .; or

(2) at a time when he is an officer or employee of the United States in the . . . legislative . . . branch of the government . . .

in relation to any proceeding, application, request for a ruling or other determination, contract, claim, controversy, charge, accusation, arrest, or other particular matter in which the United States is a party or has a direct and substantial interest, before any department, agency, court-martial, officer, or any civil, military, or naval commission . . .

Shall be fined not more than $10,000 or imprisoned for not more than two years or both; and shall be incapable of holding any office of honor, trust, or profit under the United States."

The Committee emphasizes that it is not herein interpreting this statute but notes that the law does refer to any compensation, directly or indirectly, for services by himself or another. In this connection, the Committee suggests the need for caution to prevent the accrual to a Member of any compensation for any such services which may be performed by a law firm in which the Member retains a residual interest.

It should be noted that the above statute applies to officers and employees of the House of Representatives as well as to Members.

B. Advisory Opinion No. 2, Issued July 11, 1973

(On the Subject of a Member's Clerk Hire)

REASON FOR ISSUANCE

A number of requests have come to the Committee for advice on specific situations which, to some degree, involve consideration of whether monies appropriated for Members' clerk hire are being properly utilized.

A summary of the responses to these requests forms the basis for this Advisory Opinion which, it is hoped, will provide some guidelines and assistance to all Members.

BACKGROUND

The Committee requested the Congressional Research Service to examine in depth the full scope of the laws and the legislative history surrounding Members' clerk hire. The search produced little in the way of specific parameters in either case law or congressional intent, concluding that ". . . no definitive definition was found, . . .". It is out of this absence of other guidance the Committee feels constrained to express its views.

Clerk-hire allowance for Representatives was initiated in 1893 (27 Stat. 757). The law providing it spoke of providing clerical assistance to a Representative "in the discharge of his official and representative duties . . .". The same phraseology is used today in each Legislative Appropriations bill and by the Clerk of the House in his testimony before the Subcommittee on Legislative Appropriations. An exact definition of "official and representative duties" was not found in the extensive materials researched. Remarks concerning various bills, however, usually refer to "clerical service" or terms of similar import, thus implying a consistent perception of the term as payment for personal services.

SUMMARY OPINION

This Committee is of the opinion that the funds appropriated for Members' clerk-hire should result only in payment for personal services of individuals, in accordance with the law relating to the employment of relatives, employed on a regular basis, in places as provided by law, for the purpose of performing the duties a Member requires in carrying out his representational functions.

The Committee emphasizes that this opinion in no way seeks to encourage the establishment of uniform job descriptions or imposition of any rigid work standards on a Member's clerical staff. It does suggest, however, that it is improper to levy, as a condition of employment, any responsibility on any clerk to incur personal expenditures for the primary benefit of the Member or of the Member's congressional office operations, such as subscriptions to publications, or purchase of services, goods or products intended for other than the clerk's own personal use.

The opinion clearly would prohibit any Member from retaining any person from his clerk hire allowance under either an express or tacit agreement that the salary to be paid him is in lieu of any present or future indebtedness of the Member, any portion of which may be allocable to goods, products, printing costs, campaign obligations, or any other non-representational service.

In a related regard, the Committee feels a statement it made earlier, in responding to a complaint, may be of interest. It states: "As to the allegation regarding campaign activity by an individual on the clerk-hire rolls of the House, it should be noted that, due to the irregular time frames in which the Congress operates, it is unrealistic to impose conventional work hours and rules on congressional employees. At some times, these employees may work more than double the usual work week—at others, some less. Thus employees are expected to fulfill the clerical work the Member requires during the hours he requires and generally are free at other periods. If, during the periods he is free, he voluntarily engages in campaign activity, there is no bar to this. There will, of course, be differing views as to whether the spirit of this principle is violated, but this Committee expects Members of the House to abide by the general proposition."

C. Advisory Opinion No. 3, Issued June 26, 1974

Revoked by the Committee on Standards of Official Conduct February 5, 1981.

D. Advisory Opinion No. 4, Issued May 14, 1975

Revoked by the Committee on Standards of Official Conduct February 5, 1981.

E. Advisory Opinion No. 5, Issued April 4, 1979

General Interpretation of House Rule XLIII, Clause 11

REASON FOR ISSUANCE

The Committee has received a number of inquiries concerning the application of House Rule XLIII, clause 11, to specific factual situations. This advisory opinion is issued to provide a general interpretation of the rule for the guidance of Members and interested parties.

BACKGROUND AND DISCUSSION

House Rule XLIII, clause 11, adopted on January 15, 1979, provides as follows:

> A Member of the House of Representatives shall not authorize or otherwise allow a non-House individual, group, or organization to use the words "Congress of the United States," "House of Representatives," or "official business," or any combination of words thereof, on any letterhead or envelope.

This addition to the Code of Official Conduct took effect upon adoption. The primary purpose of clause 11 is to prohibit Members from authorizing private organizations to use a facsimile of their congressional stationery to solicit contributions or political support in a direct mail appeal. Such use of congressional letterhead by non-House groups is clearly intended to convey the impression that the solicitation is endorsed by the Congress or is related to the offical business of the Member who signs the letter. In adopting clause 11, the House has determined that the use of congressional letterhead facsimiles by private organizations is a deliberate misrepresentation which reflects discredit upon the House of Representatives.

Rule XLIII, clause 11 generally would prohibit a Member from authorizing a non-House individual or group to use that Member's congressional stationery, or any letterhead that purports to be an official communication from the Congress, in any mailing paid for with non-appropriated funds. This prohibition would apply to any letterhead designed in such a manner as to convey the impression that the letter is an official communication. The Committee emphasizes that Rule XLIII, clause 2 directs Members "to adhere to the spirit and the letter of the Rules of the House of Representatives . . . " Therefore, since clause 11 is intended to prohibit solicitations by private interest groups on facsimiles of congressional stationery, it would appear to be a violation of the spirit of that rule if a Member authorized a non-House group to use letterhead that did not contain the words prohibited by clause 11, but which was designed to convey the impression that it is an official communication from the Congress. For example, letterhead which purports to be an official communication by containing a Member's committee assignments, office address, and the "congressional seal" would be contrary to the spirit of clause 11. The Committee notes in this regard that title 18 of the United States Code, section 713, specifically prohibits use of the United States seal for the purpose of conveying a false impression of sponsorship by the United States Government.

The clause 11 prohibition is not intended in any way to restrict a Member's communication with the public or his right to lend his name to any organization or interest group. The rule imposes no restriction on a Member's freedom to sign a fund-raising appeal or other solicitation of political support on a non-House group's own letterhead, and be identified as a Member of Congress. Similarly, a Member's name and title may appear in the letterhead of a non-House organization (e.g., if the Member serves in an official capac-

ity or honorary position with that organization), provided that the letterhead does not purport to be an official communication from the Congress.

The term "non-House individual group, or organization" as used in the rule would not extend to a Member's principal campaign committee. The Committee understands that the clause 11 prohibition on lending congressional letterhead to private groups was not intended to prohibit a Member from using a facsimile of official stationery in fund-raising activities for his own campaign. This interpretation is based on the debate in the Democratic Caucus which recommended adoption of clause 11 on December 6, 1978, and on the legislative history on a similar amendment that was offered to the Ethics in Government Act during the 95th Congress (see *Congressional Record*, September 20, 1978, page H10212). It should also be noted that the Senate Select Committee on Ethics issued an advisory opinion imposing comparable prohibitions on use of official stationery by non-Senate groups, and did not apply those prohibitions to a Senator's campaign committee.

The Committee emphasizes again in this regard that the clear intent of clause 11 is to prohibit special interest groups and other private organizations from using congressional letterhead for political solicitations. Such use of congressional stationery facsimiles conveys the false impression that the private group is sponsored or endorsed by the House of Representatives. This is not the case when a Member, strictly on his own behalf rather than for a third party, uses a facsimile of his personalized official stationery for campaign fund raising appeals or other political mailings. With respect to campaign solicitations, the Committee notes that such letters must include a notice regarding the availability of campaign reports filed with the Federal Election Commission, as required by title 2 of the United States Code, section 435. Moreover, with respect to other political mailings, the Committee does not believe that it is improper for a Member to use his congressional letterhead to send, for example, thank-you notes to contributors or other politically-related letters which may not be mailed under the frank. The Committee is confident that use of a Member's personalized congressional letterhead for political mailings on his own behalf would not be misinterpreted as an official communication from the House of Representatives or an endorsement by the Congress. In sum, the abuse of congressional stationery that clause 11 is designed to correct is not present in the case of a Member's campaign committee, nor was the rule intended to prohibit a Member's use of his congressional letterhead for political mailings.

The prohibitions of clause 11 also would not apply to the Democratic and Republican Congressional Campaign Committees, nor would it apply to the various informal Member organizations or caucuses composed solely of Members of Congress. These ad hoc Member groups, which are quasi-official in nature, and the party campaign committees would not be considered "non-House organizations" for purposes of Rule XLIII, clause 11.

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F. Advisory Opinion No. 6, Issued September 14, 1982

General Interpretation of House Rule XLIII, Clause 6 and House Rule XLV

REASON FOR ISSUANCE

The Committee has received an inquiry concerning the application of House Rule XLIII, clause 6, and Rule XLV, to the use by a Member of campaign funds to advertise or promote a town meeting in his district and in areas newly added to the district by reapportionment after notice of the meeting has been mailed under the frank.

BACKGROUND

House Rule XLIII, clause 6, prohibits a Member from expending funds from his campaign account that are not attributable to "bona fide campaign purposes." Rule XLV, clause 1, bars a Member from maintaining, or having maintained for his use, "an unofficial office account." These provisions were included in the amendments to the House Rules made by H. Res. 287, 95th Congress, adopted pursuant to the recommendations of the Commission on Administrative Review. The Commission, in explaining the purpose of these rules, observed (*Financial Ethics,* H.R. Doc. No. 95–73, 95th Congress, 1st Session 23 (1977)):

> The Commission strongly believes that a wall should be built between political expenses and private money and official expenses and public money, that private money should not be relied upon to pay for the conduct of the House's official business. It regards such a wall as critically important to the integrity of the representative process. . . .

Although federal statutory law (2 U.S.C § 439a) generally would allow a Member to use excess campaign funds to defray ordinary and necessary expenses incurred in connection with holding office, the amendment to House Rule XLIII, clause 6, made by H. Res. 287, 95th Congress, specifically prohibits this practice. As the Select Committee on Ethics observed in its final report (H.R. Report No. 95–1837, 95th Congress, 2d Session (1979)): "The intent of this rule is to restrict the use of campaign funds to politically related activities and thus to prohibit their conversion to personal use or to supplement official allowances." Rule XLV has a similar purpose. It was intended to eliminate the potential for " 'influence peddling' through private financing of the official expenses of Members of Congress." See *Financial Ethics, supra,* at 18.

In adopting these rules, the House was aware that "there are gray area expenditures which could be classified (as) either political or official. . ." See final report of the Select Committee on Ethics, *supra*. The rules do not include any definition of "political" or "official" expenses. As Representative Frenzel observed during the debate on H. Res. 287, 95th Congress (123 *Cong. Rec.* 5900 (March 2, 1977)):

> What is political is a matter of fact rather than of definition. . . .
>
> * * * * *
>
> (W)hat we have tried to do is to confine expenses from political accounts or volunteer committee accounts to expenses that are political. *By and large, that definition will be left up to the Member and to his volunteer committee,* and as it is broadly defined under the election law. (Emphasis added.)

The Select Committee on Ethics, in its final report, *supra,* also expressed the view that Members should make the determination as to whether gray area expenditures are to be classified as political or official.

SUMMARY OPINION

This committee agrees that the determination as to whether a particular expense is for political or official purposes should be made by the individual Member. A gathering of a Member's constituents at a "town meeting" could be either a political (campaign) event, or an official (representative) one. In such a case, the Member is free to use his judgment in defining it as political or official. However, this committee is of the view that once the Member makes his determination, he is bound by it. A single event cannot, for purposes of the House rules, be treated as *both* political and official.

When a Member sends announcements of a town meeting under the frank, he has thereby made the decision that the event is an official one. Under federal law, the franking privilege may only be used in the conduct of official business. 39 U.S.C. § 3210(a)(1). Having thus defined the event as an official one, he may not then use campaign funds (Rule XLIII, clause 6) or any other private funds (Rule XLV) to conduct, promote, or advertise the event. (It is noted that Rule XLV was intended to prohibit the expenditure of private monies for official purposes even if no particular account or repository as such is maintained. See the colloquy between Representatives Panetta and Obey during the debate on H. Res. 287, 95th Congress, 123 *Congressional Record* 5941 (March 2, 1977).)

Because the town meetings that are the subject of this opinion were promoted in the first instance by means of the frank, they thereby become official and representational functions and it is an improper mixture of public and campaign funding to promote such official town meetings as political events. In a case such as this, the wall between public and private funding is easily placed.

FURTHER CONSIDERATIONS

Having stated the general rule that certain events or activities may be deemed "official" or "political" but not both, and that the Member must exercise his judgment in making such determinations, there are long established practices not offensive to the principle of separation that are not affected by this Advisory Opinion.

One such practice is a campaign committee making use of materials originally generated and used solely in the course of the Mem-

ber's official and representational duties once the official use of the material is exhausted. For example, a Member may, at official expense and by means of the franking privilege, reproduce and distribute otherwise frankable reprints from the *Congressional Record,* radio and television programs, correspondence from public officials, etc. The Committee believes that Rule XLV, which prohibits outside contributions for official purposes, does not ban a Member from later distributing such items at campaign committee expense provided that *all* the expenses associated with reproducing and distributing the material are paid from campaign funds and the material itself or the context in which it is presented clearly establishes its campaign or political purpose and thus its non-official use, so that there would be no appearance that private funds are supplementing official allowances.

Another such practice occurs if an individual or organization, *without the Member's consent,* expends funds or donates services to advertise or promote some official or representational activity of the Member. For example, no violation would occur if a radio or television station in a Member's district promoted a Member's previously announced town meeting in public service announcements.

4. Advisory Opinions of the Select Committee on Ethics 95th Congress

Advisory Opinion No. 1

SUBJECT

Effective date of House Rule XLVI, clause 4, prohibiting use of private funds to pay for the cost of preparing and printing mass mailings.

BACKGROUND

House Rule XLVI, clause 4, as adopted by the House on March 2, 1977, provides as follows:

> Any mass mailing which otherwise is frankable by a Member under the provisions of section 3210(e) of Title 39, U.S. Code, shall not be frankable unless the cost of preparing and printing such mass mailing is defrayed exclusively from funds made available in any appropriations Act.

The Commission on Administrative Review, in its report on Financial Ethics (H. Doc. 95–73, February 14, 1977, p. 19) recommended that this restriction on mass mailings take effect January 1, 1978. However, the provision as contained in Title IV of H. Res. 287 inadvertently omitted reference to an effective date. Consequently, during House consideration of H. Res. 287 on March 2, 1977, a colloquy between Mr. Obey and Mr. Frenzel affirmed that the Commission on Administrative Review had intended that clause 4 of Rule XLVI take effect on January 1, 1978 (see Congressional Record, March 2, 1977, p. H1622), and that this was the intent of H. Res. 287.

REASON FOR ISSUANCE

Clause 4 of the House Rule XLVI is silent as to an effective date, and thus may be deemed to have taken effect upon adoption, notwithstanding legislative history to the contrary. In order to clarify the situation and to assure Members that they may continue to use private funds to prepare and print mass mailings sent under the frank until January 1, 1978, the Select Committee issues this advisory opinion.

OPINION

Members may continue to use private funds to prepare and print mass mailings sent under the frank until January 1, 1978.

ADVISORY OPINION NO. 2

SUBJECT

Applicability of House Rule XLIII, clause 4, to reimbursement or payment of necessary expenses associated with a conference, meeting, or other similar event in which a Member, officer, or employee of the House participates.

REASON FOR ISSUANCE

Members have raised a number of questions concerning the definition and application of the gifts provisions as set forth in House Rule XLIII, clause 4. An advisory opinion has been requested as to whether the reimbursement or receipt of expenses connected with events in which a Member, officer, or employee participates constitutes a gift.

BACKGROUND

House Rule XLIII, clause 4, establishes, in effect, that Members, officers, or employees of the House shall not accept gifts in any calendar year aggregating $100 or more in value, directly or indirectly, from any individual, organization, or corporation with a direct interest in legislation before the Congress, or from a foreign national.

In most cases, an individual's expenses for a meeting or conference, including transportation, food, and lodging, would exceed the aggregate figure of $100. Additional, many sponsoring organizations, domestic or foreign, would have an interest in legislation before the Congress. However, necessary expenses should not be considered to be a "gift" to a participating individual who renders personal services sufficient to constitute "equal consideration" for the expenses provided by the sponsoring organization. Conversely, it should be noted that the services rendered must be more than perfunctory in nature to constitute equal consideration for the expenses involved. For example, addressing an audience at an event or engaging in discussion seminars would be considered substantial participation sufficient to constitute "equal consideration," while simply visiting a specific site or location as part of a "fact-finding

tour" would probably not be viewed as "equal consideration" for expenses paid by a sponsoring organization.

A similar philosophy of exempting expenses for participation in an event is recognized in clause 3 of House Rule XLVII, which excludes travel, lodging, and meals from calculation of the honorarium paid for a speech or appearance.

A separate question surrounds the reimbursement or payment of similar expenses for the spouse of a Member, officer, or employee. If a sponsoring organization pays the spouse's expenses to attend an event in which the Member participates, would those expenses constitute a gift to the Member under clause 4 of Rule XLIII? Rule XLIII does not specifically address this question. But as a matter of precedent, Federal Election Commission regulations exclude payment of expenses for a spouse as a portion of the honorarium received by a Member, officer, or employee. As a matter of policy, the ability of the spouse to accompany a Member to such events has many positive benefits. If House Rules are interpreted so as to prevent reimbursement of a spouse's travel, food, and lodging expenses, the incentive for Members to participate in meaningful programs will be diminished.

SUMMARY OPINION

A Member, officer, or employee of the House (and the individual's spouse or another family member) may be paid or reimbursed for transportation, food, and lodging expenses when such expenses are directly associated with a conference, meeting, or similar event in which the Member, officer, or employee substantially participates. Such reimbursements or payments aggregating $250 or more from one source would be disclosed in accordance with the provisions of section 102(2)(C) or the Ethics in Government Act (PL 95–521).

ADVISORY OPINION NO. 3

SUBJECT

Applicability of House Rule XLIII, clause 4, to acceptance of free transportation provided by air carriers on inaugural flights.

REASON FOR ISSUANCE

The Select Committee has been requested to issue an advisory opinion on the propriety of Members, officers, or employees of the House of Representatives accepting free transportation provided by air carriers on inaugural flights.

BACKGROUND

Commercial air carriers are authorized, under federal regulations (18 CFR 223.8 and 399.38) and with the approval of the Civil Aeronautics Board, to provide free transportation on "inaugural flights" to invited guests when a new route or new equipment is introduced. Traditionally, the air carriers invite Members and em-

ployees of the House of Representatives, as well as officials of the Executive Branch, on such inaugural flights.

The applicable House Rule in this situation is Rule XLIII, clause 4, which provides, in effect, that a Member, officer, or employee of the House of Representatives shall not accept gifts in any calendar year aggregating $100 or more in value, directly or indirectly, from any party with a direct interest in legislation before the Congress, or from a foreign national.

The air carriers are subject to federal regulation, and thus are deemed to have a direct interest in legislation before the Congress. The question to be determined is whether an inaugural flight constitutes a gift.

In the case of inaugural flights, the Member, officer, or employee of the House does not appear to render any services of equal consideration to the value of the flight, and therefore an inaugural flight would appear to constitute a gift to the Member, officer, or employee. If the value of the transportation provided on an inaugural flight exceeds $100, and the Committee assumes that such would be the case in every instance, acceptance of such a gift would be prohibited under Rule XLIII, clause 4.

The Committee recognizes that the definition of the term "gift" for purposes of Rule XLIII, clause 4, might not include some situation where a trip or event is primarily intended for educational purposes and is directly related to a Member's or officer's or employee's official duties. However, the Committee finds that inaugural flights, as traditionally defined, do not have sufficient educational value to exclude them from the definition of a gift for purposes of the intent of Rule XLIII, clause 4.

SUMMARY OPINION

Acceptance of free transportation provided by air carriers on inaugural flights is prohibited under House Rule XLIII, clause 4.

ADVISORY OPINION NO. 4

SUBJECT

Under House Rules, may a Member of the House or the spouse of a Member solicit cash gifts of less than $100 for personal use through a direct mass mailing?

REASON FOR ISSUANCE

A Member of the House has requested an advisory opinion as to whether his proposal to solicit gifts of less than $100 for personal use would be in violation of House Rule XLIII.

BACKGROUND

Rule XLIII, clause 4, prohibits acceptance of gifts aggregating over $100 from "persons" having a direct interest in legislation before the Congress. Since the proposal would solicit only gifts of less than $100, it would not be in violation of clause 4.

However, Rule XLIII, clause 7, appears to have direct application to the proposed plan to solicit gifts. Before March 3, 1977, Rule XLIII, clause 7, read as follows:

> A Member of the House of Representatives shall treat as compaign contributions all proceeds from testimonial dinners or other fund-raising events if the sponsors of such affairs do not give clear notice in advance to the donors or participants that the proceeds are intended for other purposes.

This provision was designed to deal with situations in which donations were given to Members under the mistaken notion that they were to be used for campaign purposes when, in fact, they were treated as personal gifts. Hence, language was adopted which specified that unless advance notice was given, proceeds from fund-raising events could not be converted to personal use.

The House Commission on Administrative Review recommended that proceeds from testimonial dinners and other fund-raising events should not be allowed to be converted to personal use under any circumstances. Effective March 3, 1977, H. Res. 287 amended clause 7 to read simply:

> A Member of the House of Representatives shall treat as campaign contributions all proceeds from testimonial dinners or other fund-raising events.

In a technical sense, then, the propriety of the proposal turns on the interpretation of a "fund-raising event." There was no legislative history defining the term fund-raising event when Rule XLIII was adopted in 1968.

But in view of the widespread use of mass mailings to raise funds (direct mail solicitation has become a principal fund-raising technique since 1968), it would appear that the proposal under consideration constitutes a fund-raising event. In the age of computerized mass mailings, it is unnecessary for people to gather together in a common place on a particular date to constitute a "fund-raising event."

Additionally, Rule XLIII, clause 2, would appear to have applicability in this case. The provision states:

> A Member, officer, or employee of the House of Representatives shall adhere to the spirit and letter of the Rules of the House of Representatives and to the rules of duly constituted committees thereof.

A major thrust of the provisions contained in the new House Rules adopted March 2, 1977, was to severely limit the potential for Members to "cash in" on their positions of influence for personal gain. Therefore, a limitation on outside earned income was proposed and adopted. A proposal to abolish unofficial office accounts was offered and adopted. A proposal to prohibit the conversion of political funds to personal use was adopted. And the proposal discussed above to treat all proceeds from fund-raising events as campaign contributions was also adopted. Therefore, it would appear that a proposal to solicit funds for personal use would be contrary to the "spirit" of the House Rules adopted pursuant to H. Res. 287.

The final question concerns the propriety of a spouse raising funds through mass mail solicitation for the benefit of the Member. While the Select Committee recognizes the basic independence of

the spouse, the spouse under these circumstances would be acting essentially on behalf of the Member. Thus, the Member would be conducting indirectly the very activities he would be prohibited from engaging in directly.

Consequently, the mass mail solicitation of funds by a spouse for a Member's use also appears to violate the "spirit" of House Rules.

SUMMARY OPINION

A direct mail solicitation by a Member of the House or the spouse of a Member constitutes a "fund-raising event" for purposes of House Rule XLIII, clause 7. Proceeds from a "fund-raising event" for a Member of the House must be treated as "campaign contributions" and cannot be converted to personal use by the Member. Therefore, any such attempt to raise funds for personal use through a mass mailing would be in violation of House Rule XLIII, clause 7. Additionally, any such activity would appear to be contrary to the spirit of House Rules and, therefore, in violation of House Rule XLIII, clause 2.

Advisory Opinion No. 5

SUBJECT

Use of campaign funds to pay for official expenses incurred prior to March 3, 1977.

REASON FOR ISSUANCE

The Select Committee has received several inquiries regarding the use of campaign funds to pay for official expenses incurred prior to the effective date of House Rule XLIII, clause 6, and Rule XLV.

BACKGROUND AND DISCUSSION

House Rule XLIII, clause 6, as amended on March 2, 1977, restricts the use of campaign funds to bona fide campaign purposes. House Rule XLV, also adopted on March 2, 1977, prohibits the acceptance of private contributions to defray ordinary and necessary expenses incurred in the operation of a congressional office. Both Rules changes became effective upon adoption.

Some Members committed excess campaign funds to pay for official expenses incurred on or before March 3, 1977, the effective date of the new Rules, but have not actually expended their campaign funds to pay those debts. In such cases, the campaign funds were contributed prior to the Rules changes and the expenses were incurred before the adoption of the new Rules.

The amendment to Rule XLIII, clause 6, and new Rule XLV were not intended to have an ex post facto effect. Therefore, the Select Committee finds that use of campaign funds contributed prior to the Rules changes to pay for official expenses incurred prior to March 3 is permissible under the Rules.

House Rule XLV clearly prohibits Members who have incurred official expenses either before or after March 3 from raising pri-

vate funds subsequent to the effective date of the Rules course, to pay for campaign or political expenses incurred before or after March 3.

SUMMARY OPINION

Members who incurred official expenses prior to March 3, 1977, the effective date of new Rule XLIII, clause 6, and Rule XLV, may use campaign funds available on or before that date to pay those official expenses. The payment of obligations incurred prior to the effective date of the new Rules would be limited to the liability accrued up to March 3. Campaign funds raised after March 3, 1977 may not be used to pay for official expenses incurred before or after the effective date of the new Rules.

ADVISORY OPINION NO. 6

SUBJECT

Acceptance of in-kind services for official purposes.

REASON FOR ISSUANCE

The Select Committee has been asked whether House Rule XLV, which prohibits unofficial office accounts, extends to private contributions of *in-kind* services for official purposes.

BACKGROUND AND DISCUSSION

House Rule XLV provides that no funds may be paid into any unofficial office account subsequent to March 2, 1977, and that such accounts must be abolished by January 3, 1978. The definition of an unofficial office account included in the new Rule focuses on the most common form, i.e., a privately subsidized account used to supplement official allowances.

The legislative history of Rule XLV refers to an unofficial office account as a fund, respository, or process whereby funds are received or expended. The reasons for adopting new Rule XLV, as presented in the Financial Ethics report of the Commission on Administrative Review (H. Doc. 95–73, February 14, 1977), emphasize that eliminating private support of the public's business should be the primary objective of a new Rule:

> The Commission strongly believes that private funds should be used only for politically-related purposes. Official allowances should reflect the necessary cost of official expenses. . . . To suggest otherwise would be to accept or condone the continuation of the present system [of unofficial office accounts] which, at the very least, allows for the appearance of impropriety, and, at worst, creates a climate for potential "influence peddling" through private financing of the official expenses of Members of Congress.

Although it is clear that acceptance of monetary contributions to sustain such accounts was perceived as conduct to be prohibited by the new Rule, questions have been raised concerning the application of Rule XLV to acceptance of certain in-kind services (e.g.,

office supplies and equipment, district office space, etc.) and whether such items will be treated differently than monetary contributions for purposes of the Rule XLV prohibition.

The Select Committee finds that no distinction can be made between in-kind and monetary contribution. Whether the private support alluded to in the Commission's report is in the form of a monetary contribution or in the form of an in-kind service is not relevant in view of the intended prohibition against the private financing of official business. Moreover, it can hardly be argued that donation of in-kind services is any less an infusion of private support for official business than is the donation of money.

At least two precedents for treating in-kind services as monetary contributions are found in regulations promulgated by the Federal Election Commission (FEC) and the Internal Revenue Service (IRS). Those regulations require the inclusion of in-kind donations as contributions to unofficial office accounts, thus confirming the Select Committee's understanding that money and in-kind contributions should be treated the same.

The FEC defines an "office account" (unofficial office account) as "an account established for the purpose of supporting the activities of a Federal or State officeholder which contains excess campaign funds . . ." (11 CFR 113.1b). Such excess campaign funds include contributions of "anything of value." Therefore, according to the FEC definition, unofficial office accounts may encompass in-kind services or resources.

Similarly, the IRS considers the donation of in-kind resources as a "contribution," applying the criterion of "anything of value." The IRS treats the contribution of in-kind services or resources used for official purposes as personal income to the Member, just as it treats contributions to unofficial office accounts.

In sum, the Select Committee finds that for purposes of applying Rule XLV, no logical distinction can be drawn between the private contribution of in-kind services and the private contribution of money, and that both perpetuate the very kind of unofficial office accounts and practices that are prohibited by House Rule XLV.

Equally clear, however, is that various in-kind services and functions provided by federal, state and local government agencies do not fall in the same category as private donations of money or in-kind services. Thus, the provision of office space or rooms for constituent meetings, etc., by a state or local government would not be prohibited by application of this Rule. Of course, the occasional use of privately owned meeting space where no other appropriate public accommodations are reasonably available for meeting constituents does not fall within the proscriptions of the new Rule.

Additionally, application of the Rule would not prohibit a Member from continued participation with various educational intern, fellowship or volunteer programs. Members have long recognized that there is an inherent educational and professional benefit in interns, fellows, and volunteers viewing first hand the Legislative Branch of government, and that there are compelling public policy considerations for encouraging such programs. There is nothing in the legislative history that suggests an intent to discontinue these programs, nor has there surfaced any evidence of abuses resulting from the infusion of private money into public

business causing conflict of interest or other situations intended by Congress to be prohibited by the new Rule. The Select Committee believes these programs are of primary benefit to the persons involved and notes that interns, fellows, and volunteers are not on the payroll of the House, nor are they considered to be employees of the House of Representatives. Therefore, this interpretation of Rule XLV does not apply to intern programs, provided the internships are primarily for educational purposes and do not give undue advantage to special interest groups or others with a direct interest in legislation.

However, it is clear that a Member would be violating the intent and the spirit of House Rule XLV if he attempted to supplement his official allowance by raising, receiving, or disbursing contributions to hire or support interns in his office. Therefore, it follows that a Member and his staff are prohibited from personally raising, receiving, or disbursing contributions used to support an educational intern, fellowship, or volunteer program. This holding represents the only effective method for restricting the potential to collect and maintain, directly or indirectly, unofficial funds for supplementing staff assistance and the officially provided clerk-hire allowance.

SUMMARY OPINION

For purposes of House Rule XLV, the private contribution of in-kind services for official purposes is prohibited. However, Rule XLV does not apply to services provided by federal, state and local government agencies or to the occasional use of privately-owned meeting space where no public accommodations are reasonably available for meeting with constituents. Nor does Rule XLV apply to interns or volunteers in a Member's office, based on the understanding that such intern programs are primarily of educational benefit to the intern and do not give undue advantage to special interest groups. However, Members and their staffs may not personally raise, receive or disburse any private contributions for intern programs associated with their offices.

ADVISORY OPINION No. 7

SUBJECT

Definition of a gift for purposes of House Rule XLIII, clause 4.

REASON FOR ISSUANCE

The Select Committee has received a number of inquiries concerning the definition of the word "gift" and application of the provisions of House Rule XLIII, clause 4 pertaining to acceptance of gifts.

BACKGROUND AND DISCUSSION

House Rule XLIII, clause 4 was amended in March 1977, to provide that "a Member, officer, or employee of the House shall not accept gifts in any calendar year aggregating $100 or more in value, directly or indirectly, from any party with a direct interest

in legislation before the Congress, or from a foreign national." Specifically exempted from this provision are: (1) gifts from relatives; (2) gifts valued at $35 or less; and (3) gifts of personal hospitality of an individual.

The Commission on Administrative Review, in its report on Financial Ethics (H. Doc. 95–73, February 14, 1977) recommending the Rules changes that were enacted by the House, specified that bequests and other forms of inheritance should not be considered gifts for purposes of the new Rule, and explained personal hospitality to mean "hospitality extended for a non-business purpose by an individual, not a corporation or organization, on property or facilities owned by that individual or his family." Additionally, it is understood that loans and campaign contributions are not considered to be gifts.

Other than the exemptions specified in the Rule and the legislative history, there is no precise definition of what constitutes a gift for purposes of Rule XLIII, clause 4. The House recognized the likelihood that Members, officers and employees would need guidance on the definition of terms used in the new House Rules, and therefore passed H. Res. 383 which authorized the Select Committee to issue advisory opinions providing such guidance and interpretation respecting the application of the Rules.

The Select Committee begins with the proposition that the basic legal definition of a gift should be used in applying the provisions of Rule XLIII, clause 4, as follows:

> A payment, subscription, advance, forbearance, rendering, or deposit of money, services, or anything of value, including food, lodging, transportation, or entertainment, and reimbursement for other than necessary expenses, unless consideration of equal or greater value is received by the donor.

This definition is implicit, for example, in the Select Committee's Advisory Opinion #2, which states that necessary expenses provided a Member in connection with an event in which he "substantially participates," i.e., renders consideration of equal value, do not constitute a gift.

The Select Committee finds that there are certain categories of gifts that were never intended to be covered under the Rule XLIII, clause 4 limitations on acceptance of gifts. These are items that do not present potential conflicts of interest or are related to a Member's official duties. For these reasons, Rule XLIII, clause 4 is not applicable to the following categories of gifts:

> Food, lodging, transportation, and entertainment provided on an official basis by federal, state, and local governments and political subdivisions thereof. Members, officers, and employees are frequently invited to various functions paid for or sponsored by such government agencies. It was not the intent of the gifts limitation to prohibit Members, officers and employees from participating in such events. Even if the individual is not fully participating, but is simply present, for example, at a groundbreaking ceremony or a banquet honoring newly-elected officials, it would serve no purpose to preclude such activities.

Food, lodging, transportation, and entertainment provided by a foreign government within a foreign country. The Foreign Gifts and Decorations Act was amended by PL 95-105 to give the consent of Congress to acceptance of gifts of travel or expenses for travel provided by a foreign government for travel taking place entirely outside the United States. Any such gifts of travel expenses must be disclosed to the Committee on Standards of Official Conduct within thirty days after departure from the donor country. Since such gifts from a foreign government are subject to these statutory requirements, they are exempted from the prohibitions of Rule XLIII.

Communications to a Member's offices in Washington, D.C. and his district, including subscriptions to newspapers, magazines, and periodicals. Members are traditionally provided free subscriptions to weekly news magazines, newspapers, interest group journals, and other publications which are useful as information sources or reference tools in the conduct of the Member's official duties. In many cases, these publications are provided by organizations with a direct interest in legislation and could exceed $100 in value in a calendar year, particularly if postage is added (e.g., local newspapers). It would be inappropriate and contrary to the public interest to prohibit Members from receiving these materials and might impinge on the rights of citizens to communicate with their Representative. The Select Committee emphasizes that this finding applies primarily to free subscriptions to publications, and not to individual items of considerable value, such as a set of encyclopedias or rare books.

Bona fide awards presented in recognition of public service and available to the general public. A Member, officer, or employee should be permitted to accept an award valued at more than $100 from an organization so long as the award is not contrived for one special occasion and is available to the general public.

A suitable memento of a function held in honor of the Member, officer, or employee. A Member, officer, or employee should be permitted to accept a suitable memento of reasonable value. However, the Committee emphasizes that a "suitable memento" would not include items such as cash, a television set, or automobile.

Consumable products provided by home-state businesses to a Member's office but which are primarily intended for consumption by persons other than the Member and his staff. Members have traditionally received gifts of consumable items (e.g., cigarettes, peanuts, etc.) from businesses in their home states. These consumable products are usually passed on to constituents and other visitors to the office and are therefore not considered by the Committee to be gifts to the Member or his staff. This applies only to gifts of consumable items, and only when such items are consumed primarily by persons other than the Member and his staff.

Food and beverage consumed at banquets, receptions, or similar events. This exemption does not apply to dinners for small groups at restaurants or other such private affairs.

SUMMARY OPINION

For purposes of Rule XLIII, clause 4, a gift is defined as follows:

> A payment, subscription, advance, forbearance, rendering, or deposit of money, sevices, or anything of value, including food, lodging, transportation, or entertainment, and reimbursement for other than necessary expenses, unless consideration of equal or greater value is received by the donor.

The Select Committee finds, based on the language of new Rule XLIII, clause 4, the Rule's legislative history, the absence of conflict of interest issues, and/or public policy considerations, that the following items are not gifts for purposes of Rule XLIII, clause 4:

(1) Bequests and other forms of inheritance;

(2) Loans made in a commercially reasonable manner (including requirements that the loan be repaid and that a reasonable rate of interest be paid);

(3) Political contributions as defined by the Federal Election Commission and otherwise reported as required by law;

(4) Food, lodging, transportation, and entertainment provided on an official basis by federal, state, and local governments or political subdivisions thereof;

(5) Food, lodging, transportation, and entertainment provided by a foreign government within a foreign country;

(6) Communications to a Member's offices in Washington and his district, including subscriptions to newspapers, magazines, and other periodicals;

(7) Bona fide awards presented in recognition of public service and available to the general public;

(8) Suitable mementos of a function honoring the Member, officer, or employee;

(9) Consumable products provided by home-state businesses to a Member's office that are primarily intended for consumption by persons other than the Member and his staff;

(10) Food and beverages consumed at banquets, receptions, or similar events.

ADVISORY OPINION NO. 8

SUBJECT

Applicability of House Rule XLIII, clause 4 to acceptance of necessary expenses paid by an organization in connection with a fact-finding event which is directly related to the official duties of a Member, officer, or employee.

REASON FOR ISSUANCE

The Select Committee has received numerous inquiries concerning whether a Member, officer, or employee may accept payment or reimbursement for necessary expenses from an organization sponsoring a fact-finding event.

BACKGROUND

Members, officers, and employees of the House of Representatives are often invited by independent foundations, corporations, unions and other non-governmental organizations, both foreign and domestic, to attend a "fact-finding" event which is intended for educational purposes directly related to their official duties.

For example, an oil company may sponsor an inspection tour of its offshore oil drilling platform, or a lumber company may arrange a demonstration of new logging methods in a remote area. Similarly, a foreign foundation may invite Members and employees to attend an educational program designed to promote better understanding and improve U.S. relations with that country.

The applicable House Rule regarding fact-finding events is Rule XLIII, clause 4, which provides that a Member, officer or employee shall not accept gifts [1] in any calendar year aggregating $100 or more in value, directly or indirectly, from any party with a direct interest in legislation before the Congress, or from a foreign national. In many instances, the sponsoring organization of a fact-finding tour or similar activity would be deemed to have a direct interest in legislation before the Congress, and the travel expenses provided by the organization would alone exceed $100.

DISCUSSION

Although there has been some criticism regarding abuses of "fact-finding tours" in the past, the Select Committee finds that it would be contrary to the public interest and the intent of Rule XLIII to prohibit Members, officers, and employees from attending fact-finding events or activities which have a legitimate purpose directly related to the official duties of the Congress. The Committee also notes the precedent in current law (22 U.S.C. 2451–2) which allows federal employees to accept travel expenses paid by foreign governments in connection with a trip which is for an educational or cultural purpose and is so certified by the State Department.

Therefore, the Select Committee holds that *necessary expenses* paid by an organization sponsoring a fact-finding event are exempted from the limitations of Rule XLIII, clause 4, provided that the fact-finding event or activity is directly related to the official duties of the Member, officer, or employee. Any such reimbursement or payment of travel expenses aggregating over $250 in value from one source would be subject to disclosure under the requirements of the Ethics in Government Act (PL 95–521). This public disclosure will guard against the potential abuse of converting this kind of activity from an official business purpose to that of personal pleasure or entertainment. Gifts of that nature exceeding $100 in value were clearly intended to be prohibited by Rule XLIII, clause 4.

This exemption also applies to necessary expenses for the spouse of a Member, officer, or employee in the case of foreign travel. The Committee recognizes that the ability of a spouse to accompany a Member on a foreign trip is often a matter of protocol and there-

[1] In advisory Opinion No. 7, the Committee held that Rule XLIII, clause 4 does not apply to travel expenses provided on an official basis by federal, state or local governments, or provided by a foreign government within a foreign country.

fore has diplomatic value. However, the Committee does not believe that there would be many instances in which the presence of the spouse would be necessary or appropriate in the case of domestic fact-finding events.

The Committee notes that the phrase "fact-finding event or activity" does not apply to situations where expenses are provided in consideration of personal services rendered. In those cases where the purpose of a Member's trip is to provide such services as delivering a major speech to a convention, necessary expenses are not considered to be a gift (see Advisory Opinion #2, issued April 6, 1977). In comparison, although a Member of Congress may render some personal services in the course of a fact-finding event, the primary purpose of the trip is for the Members, officers, or employees to become better informed regarding subject matters closely related to their official duties.

Additionally, the Select Committee emphasizes that the definition of a "fact-finding event" must be interpreted narrowly. House Rule XLIII, clause 2 puts Members on notice that not only the "letter" but also the "spirit" of House Rules must be adhered to. Therefore, since Members are already provided travel expenses to and from their own districts, a Member should not accept free transportation on a corporate jet or commercial flight from Washington to his district, on grounds that he would "tour" the corporate facilities there. Neither would the exemption apply, for example, to travel expenses provided by representatives of the maritime industry to attend a ship-launching.

The intended definition of a fact-finding event would also not extend to expenses incurred during such an event which are unrelated to the specific fact-finding activity. For example, if a Member spends two days attending an educational event in a foreign country and then spends several more days touring that country at his leisure, the expenses associated with the sight-seeing tour would not be exempted from the Rule. Similarly, this exemption for fact-finding activities applies only to *necessary expenses* (transportation, food, and lodging) and not to entertainment. Thus, a Member of Congress, whether traveling on a fact-finding tour or under any circumstances, may not accept gifts of entertainment from groups with a direct interest in legislation beyond the $100 limit imposed by Rule XLIII.

The Committee also emphasizes that to qualify for the exemption, the fact-finding event or activity must bear a direct relationship to official duties. The responsibility will rest with the Member, officer, or employee to determine whether the particular event or activity is intended for fact-finding purposes directly related to his official duties.

SUMMARY OPINION

A Member, officer, or employee of the House (and the individual's spouse in the case of foreign travel) may be paid or reimbursed for transportation, food, and lodging expenses provided by the sponsor of a fact-finding event or activity which is directly related to official duties. Such reimbursements or payments aggregating $250 or more in value from one source would be disclosed in

accordance with the provisions of section 102(2)(C) of the Ethics in Government Act (PL 95-521).

The Committee emphasizes that this holding has no bearing on any constitutional or statutory prohibition regarding acceptance of gifts from foreign governments or their representatives.

Advisory Opinion No. 9

SUBJECT

Definition of an indirect gift for purposes of House Rule XLIII, clause 4.

REASON FOR ISSUANCE

The Select Committee has received a number of requests for an advisory opinion interpreting what constitutes an "indirect gift" to a Member, officer, or employee for purposes of applying the new gifts provision in House Rules.

BACKGROUND AND DISCUSSION

House Rule XLIII, clause 4 provides that a Member, officer, or employee shall not accept gifts in any calendar year aggregating $100 or more in value, directly or indirectly, from any party with a direct interest in legislation before the Congress.

The word "indirectly" has principal reference to gifts to the spouse or dependent of a Member, officer, or employee of the House of Representatives.[1] For example, if a Member would be personally barred from receiving a color television set from a registered lobbyist, obviously it would not be appropriate for the Member's spouse or dependents to receive such a gift. Therefore, as a general rule, gifts received by the spouse or dependent of a Member, officer, or employee of the House from a party with a direct interest in legislation before the Congress would be considered to be indirect gifts to the Member, officer, or employee. Failure to so apply the gifts provision to spouses and dependents could cause the intent of the Rule to be easily defeated. The issue is not simply one of preventing circumvention of the gifts provision, but also a common sense recognition that assets and holdings of a spouse and dependents are generally considered to be shared by the partner, i.e., the Member, officer, or employee. However, in finding that the gifts to a spouse or dependent generally constitute an indirect gift to a Member, officer, or employee because of the nature of the relationship involved, the Select Committee is well aware that where a truly independent status is identified, considerations of privacy and equal rights should be controlling.

Therefore, the following guidelines are set forth by the Select Committee to clarify when gifts to spouses and dependents would not be considered as indirect gifts to the Member, officer, or employee of the House for purposes of Rule XLIII, clause 4.

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[1] The word "indirectly" also refers to gifts received by a Member, officer, or employee through or from a third party. For example, a Member or employee could not accept a gift from an agent of a person with a direct interest in legislation before the Congress who had actually paid for the gift.

A spouse or dependent may frequently receive a gift from an employer or another person which is prompted by recognition of their services, friendship, or some other consideration unrelated to the official responsibilities of the Member, officer, or employee. When it is clear that such gifts are truly independent of the Member, officer, or employee and would have been offered regardless of the donee's relation to that person, such gifts would not be considered as indirect gifts for purposes of Rule XLIII. However, when it is apparent that the gift may not have been offered *but for* the donee's relation to a Member, officer, or employee, such a gift would constitute an indirect gift to the Member, officer, or employee.

An additional clarification that has been requested concerns the treatment of "simultaneous gifts" to a Member, officer, or employee and his spouse or dependents. For example, an individual or organization with a direct interest in legislation before the Congress may well invite a Member's family to a dinner or reception. The question is whether such gifts should be aggregated or considered as separate gifts in relation to the provision of Rule XLIII, clause 4 which exempts all gifts valued at $35 or less. For example, the question has been raised: "Would a dinner costing $20 each for a Member and his spouse be considered as one $40 gift or as two $20 gifts (thus falling under the $35 exemption)?"

The legislative history of the amendment to Rule XLIII, clause 4 clearly indicates that the intent of the "de minimis" exemption for gifts of less than $35 in value was to avoid imposing excessively burdensome recordkeeping requirements and to ignore insubstantial gifts which do not present any potential conflict of interest. Furthermore, it would seem to serve no public policy consideration to prohibit a Member from attending a reception with his spouse and dependents, but to allow the Member to attend such a reception alone. Therefore, the Select Committee finds that simultaneous gifts valued at $35 or less should not be aggregated, but rather should be considered as separate gifts.

SUMMARY OPINION

Gifts to a spouse or dependent are considered indirect gifts to the Member, officer, or employee for purposes of House Rule XLIII, clause 4, unless such gifts are prompted by some consideration unrelated to the Member, officer, or employee. Simultaneous gifts such as dinner or reception invitations to a Member and his spouse and dependents should be treated as separate gifts, and not be aggregated. Therefore, unless an individual gift is valued at more than $35, it would be exempted for purposes of Rule XLIII, clause 4.

ADVISORY OPINION No. 10

SUBJECT

Who has a direct interest in legislation before the Congress?

REASON FOR ISSUANCE

The Select Committee has been requested to issue interpretive guidelines concerning who has "a direct interest in legislation before the Congress" for purposes of applying House Rule XLIII, clause 4.

BACKGROUND AND DISCUSSION

House Rule XLIII, clause 4 provides, in effect, that a Member, officer, or employee shall not accept gifts aggregating over $100 in value in any calendar year from any party with *a direct interest in legislation before the Congress.* This Rule has restricted gifts to Members since its adoption in 1968, when it prohibited Members, officers, and employees from accepting gifts of "substantial value" from any party with a direct interest in legislation before the Congress. However, the term "direct interest in legislation" was neither defined nor discussed in the legislative history surrounding Rule XLIII, and clause 4, itself was essentially unenforceable because of the totally subjective nature of the term "substantial value."

On March 2, 1977, the House amended Rule XLIII, clause 4 by defining the term "substantial value" to mean gifts aggregating over $100 in a calendar year. The Commission on Administrative Review, in its report recommending that the Rule be amended (H. Doc. 95–73, February 14, 1977), noted that under the old Rule it was very difficult to define precisely who has a direct interest in legislation before Congress, since almost every citizen has such an interest. The Commission recommended that:

> . . . the term "direct interest" should be defined so that it includes, but is not limited to, any person or organization who must file under the Federal Lobbying Act of 1946 or its successor statute.

Therefore, H. Res. 287 amended House Rule XLIII, clause 4, to read, in part:

> Any person registered under the Federal Regulation of Lobbying Act of 1946 (or any successor statute), any officer or director of such registered person, and any person retained by such registered person for the purpose of influencing legislation before the Congress shall be deemed to have a direct interest in legislation before the Congress.

The Select Committee also believes that any person, organization, or corporation which retains or employs a lobbyist should be deemed to have a direct interest in legislation. However, the Commission's report also noted that others, in addition to registered lobbyists, may well have a direct interest in legislation before the Congress, and that Rule XLIII, clause 4 should be interpreted in such a way that Members are "alerted to the need to exercise care in accepting gifts aggregating over $100 in any calendar year from all sources."

The issue before the Select Committee is to clarify the term "direct interest in legislation before the Congress." The Congress, by the very nature of the institution, represents individuals and

groups with a direct interest in legislation. Taxpayers anticipating a rebate, parents petitioning for day care centers, etc., communicate with Members of Congress concerning legislation of interest to them. In one sense, therefore, most citizens have a "direct interest in legislation before the Congress." But it is not the intent of Rule XLIII, clause 4 to bar all gifts valued at more than $100 from concerned citizens interested in federal legislation.

The problem for the Select Committee is to delineate to the extent possible the point at which individuals or organizations are transformed from being "concerned citizens" to those having a "direct interest" in legislation, placing them in a class of donors from whom Members may not accept certain gifts valued at more than $100.

Beyond registered lobbyists and persons or organizations which employ lobbyists, there is another group of clearly identifiable individuals and organizations that have a direct interest in the legislative process, i.e., organizations which maintain a separate, segregated fund for political purposes (a Political Action Committee as defined in Sec. 321 of the Federal Election Campaign Act of 1971) and the officers or directors of such organizations. Additionally, consistent with FEC regulations, any subordinate or affiliated organization of a "parent" organization which maintains such a Political Action Committee should certainly also be deemed to have a direct interest in legislation before the Congress for purposes of Rule XLIII, clause 4. Of course, persons who simply contribute to such a political fund would not be included within this category.

However, there are clearly a number of individuals and groups which neither retain paid lobbyists nor maintain a Political Action Committee, yet have a very direct and substantial interest in legislation before the Congress. With this understanding, the Select Committee believes that Members should not accept gifts aggregating over $100 in value from any individual or organization that the Member knows has a distinct or special interest in influencing or affecting the federal legislative process which sets such indivdual or organization apart from the general public. In this context, the Select Committee emphasizes the clear statement of intent issued by the Commission on Administrative Review that Members should be *"alerted to the need to exercise care . . . in accepting gifts from all sources"* (emphasis added). Implicit in this admonition is the understanding that while individuals often receive gifts from non-relatives, and occasionally from organizations, it is rare that such gifts are valued at more than $100. Therefore, unless such a gift is from a close personal friend, it is most likely offered because of the Member's position as a United States Representative.

The Select Committee also notes that appropriate exceptions have been made for purposes of Rule XLIII, clause 4 to allow acceptance of certain categories of gifts, as set forth in Advisory Opinion #7, even if such "gifts" are valued at more than $100. Thus, the Committee reiterates that a Member, officer, or employee should be most careful before accepting other forms of gifts from any source.

However, if the Member does not believe that the donor of the gift has a distinct or special interest in the congressional legislative process which sets him clearly apart from the general public, then

the Member should feel free to accept such gifts. Of course, gifts aggregating over $100 from one source must be disclosed in accordance with the new financial dislosure requirements of the Ethics in Government Act (PL 95-521).

Finally, the question arises as to when legislation is considered to be "before the Congress." A narrow construction might be confined to an interest in a specific piece of legislation then pending before at least one subcommittee, or any other subdivision, of either House. If the Congress were not in session, for instance, no legislation would be before it, and unlimited gifts (subject only to disclosure requirements) might then flow freely to favored legislators. Also, if the Congress were in session, but the "direct interest" was in having a particular piece of proposed legislation introduced, a narrow construction of the prohibition might lead to the conclusion that the legislation was *not yet* "before the Congress."

Clearly, in either of the two foregoing instances, a result incongruous with the entire purpose of the gift restriction would occur. When this purpose is the reduction of the tendency of certain types of gifts to affect legislative action, then a narrow reading would invite a subversion of attempts at achieving that goal.

Therefore, the phrase, "legislation before the Congress" should be read broadly to include an ongoing special interest in affecting the legislative process.

SUMMARY OPINION

For purpose of House Rule XLIII, clause 4, the following individuals and organizations are deemed to have a direct interest in legislation before the Congress:

(1)(a) Any person, organization, or corporation registered under the Federal Regulation of Lobbying Act of 1946, or any successor statute; and any person who is an officer or director of a registered lobbyist, or a person who has been employed or retained by a registered lobbyist for the purpose of influencing legislation before the Congress;

(b) Any person, organization, or corporation which employs or retains a registered lobbyist;

(2) Any corporation, labor organization, or other organization which maintains a separate, segregated fund for political purposes (Political Action Committee as defined in the Federal Election Campaign Act of 1971 (2 U.S.C. 441b)); any subordinate or affiliated organization thereof; and the officers or directors of such organizations; and

(3) Any other individual or organization which the Member, officer, or employee knows has a distinct or special interest in influencing or affecting the federal legislative process which sets such individual or organization apart from the general public.

ADVISORY OPINION NO. 11

SUBJECT

The Select Committee has been asked whether a Member could accept proceeds from a fund-raising event for the Member's unrestricted personal use, if the event were sponsored by a group independent of the Member.

REASON FOR ISSUANCE

The Select Committee has been asked whether a Member could accept proceeds from a fund-raising event for the Member's unrestricted personal use, if the event were sponsored by a group independent of the Member.

BACKGROUND AND DISCUSSION

House Rule XLIII, clause 7, as amended on March 2, 1977, prohibits the conversion of proceeds from testimonial dinners or other fund-raising events to a Member's personal use. The Select Committee stated in Advisory Opinioin No. 4 that a mass mailing constituted a fund-raising event for purposes of Rule XLIII, clause 7, and concluded that neither a Member nor his spouse could directly solicit funds for personal use by a fund-raising technique such as a mass mailing.

An additional question has been asked which concerns the acceptance of funds for a Member's unrestricted personal use that are raised by a group independent of the Member, his spouse, staff, or campaign committee.

As a general proposition, House Rules do not affect the actions of any individuals or organizations which are independent of a Member of Congress. The issue before the Select Committee, however, is not whether an independent group may conduct a fund-raising event, but whether a Member may accept the proceeds of such an event given in his behalf when such proceeds are for the Member's unrestricted personal use.

A major thrust of the provisions contained in the new House Rules was to severely limit the potential for Members of Congress to use their positions of influence for personal gain. In this context, therefore, it is irrelevent whether the Member himself solicits these funds, or whether the Member accepts funds for personal use that are solicited on his behalf by an independent committee.

Rule XLIII, clause 2 specifically states that a Member shall "adhere to the spirit and letter of the Rules of the House of Representatives." The clear intent of clause 7 is to prevent the acceptance of proceeds from fund-raising events for personal use. Thus, to allow a Member to accept such proceeds if raised by a paper "Dinner Committee," "Fund-raising Committee," or similar subterfuge would render Rule XLIII, clause 7 meaningless.

Finally, the Committee recognizes the distinction between the treatment of proceeds from a fund-raising event for purposes of Rule XLIII, clause 7, and acceptance of gifts for purposes of Rule XLIII, clause 4. Clause 4 does not prohibit the acceptance of gifts from anyone who is not a foreign national or does not have a direct

interest in legislation before the Congress. Clause 7, however, addresses gifts from fund-raising events, specifying that proceeds from such events should not be treated as personal gifts, but as campaign contributions.

SUMMARY OPINION

For purposes of House Rule XLIII, clause 7, a Member is prohibited from accepting the proceeds from a fund-raising event for his unrestricted personal use.

ADVISORY OPINION NO. 12

SUBJECT

Application and interpretation of House rule XLIV, financial disclosure.

REASON FOR ISSUANCE

The Select Committee has received a number of inquiries regarding the interpretation and application of the new financial disclosure requirements under House rule XLIV, as amended on March 2, 1977.

BACKGROUND AND DISCUSSION

Rule XLIV requires Members, officers, their principal assistants, and professional committee staff to file an annual financial disclosure statement with the Clerk of the House. The first disclosure statement under the new Rule must be filed by April 30, 1978 and *will cover only the period from October 1 through December 31, 1977.* Thereafter, each annual disclosure statement will relate to the preceding calendar year.

In order to clarify the disclosure requirements, the Committee, pursuant to its authority under H. Res. 383, issues this Advisory Opinion defining and interpreting the provisions of Rule XLIV, which requires the following information to be disclosed:

(1) *Income.*—The source and amount of each item of income aggregating $100 or more from one source. *Capital gains are excluded from the first filing.*

(2) *Gifts.*—(A) The source, a brief description, and value of gifts of transportation, lodging, food, or entertainment aggregating $250 or more from one source; and (B) the source, a brief description, and value of all other gifts aggregating $100 or more from one source. Exempted are gifts from relatives, gifts valued at $35 or less, and gifts of personal hospitality of an individual in the personal residence of, or on property owned by that individual.

The term "gift" means a payment, advance, forebearance, rendering, or deposit of money, or any thing of value, unless consideration of equal or greater value is received, but does *not* include: (1) inheritances; (2) political contributions; (3) transportation, lodging, food, and entertainment provided: (a) by federal, state, and local governments, or political subdivisions thereof; or (b) within a foreign country by the government of that country; (4) communica-

tions to the offices of a Member, including subscriptions to newspapers and periodicals; (5) suitable mementos of a function held in honor of the Member, officer, or emloyee; (6) consumable products provided by home-state businesses to a Member's office for distribution; and (7) food and beverages consumed at banquets, receptions or similar events. (N.B. This exemption does not include dinners for small groups at restraurants or other such "private" events.)

In disclosing gifts, it is not necessary that exact dollar figures be reported in every case. If the exact value of a gift is not reasonably ascertainable, a good-faith estimate is sufficient for disclosure purposes. In some cases involving "travel-related" expenses provided as a gift to a reporting individual, it might be difficult to provide even the approximate value of such expenses. Under these limited circumstances, a brief description of the nature of the expenses provided would be sufficient for disclosure purposes.

Travel-related expenses provided to a Member or employee for his personal benefit and which are unrelated to official duties are considered to be gifts. Travel-related expenses provided for speaking engagements, fact-finding tours, etc., are not considered to be gifts and should be disclosed as reimbursements (see below).

(3) *Reimbursements.*—The source and value of reimbursements, directly or indirectly, for expenditures aggregating $250 or more in value from any one source. Exempted are reimbursements for travel-related expenses provided by federal, state and local governments, or political subdivisions thereof. Reimbursements provided by foreign governments or by international governmental associations (e.g., NATO, Interparliamentary Union) are exempt. Such foreign travel-related expenses are required to be disclosed elsewhere under the terms of the Foreign Gifts and Decorations Act, as amended (Public Law 95–105).

Additionally, Members of Congress are often provided travel-related expenses from campaign funds to make political appearances on behalf of their colleagues or other candidates for federal office. Reimbursements for these campaign-related activities are exempt from disclosure since such expenses are required to be disclosed elsewhere under the Federal Election Campaign Act.

Disclosure of reimbursements is thus required for expenses provided by non-governmental sources such as trade associations, foundations, corporations, labor unions, educational institutions, and individuals. This category would generally include items such as travel expenses provided in connection with a speaking engagement or a fact-finding event related to official duties, whether those expenses were reimbursed to the individual or paid directly by the sponsoring organization.

Since reimbursements will often involve travel-related expenses which are not provided directly to a Member or employee on an individual basis, but rather involve an official group or delegation (as part of a fact-finding tour, etc.), actual or estimated costs may not be reasonably ascertainable. Therefore, whenever the exact or appropriate value of travel-related expenses is not reasonably ascertainable, a brief description of the itinerary or the nature of the expenses provided is sufficient for disclosure purposes.

(4) *Holdings.*—The identity and category of value of any property held, directly or indirectly, in a trade or business or for investment

or the production of income and which has a fair-market value of at least $1,000 as of the close of the year. Items such as household goods, automobiles, and other personal property not principally held for investment purposes or the production of income need not be disclosed.

With respect to business interests, the reporting individual need only disclose the category of value of his interest in the business and not the assets and holdings of the business itself. Since the value of holdings needs to be disclosed only within certain categories, an appraisal to determine the fair-market value should usually not be necessary. However, in those few instances where it is difficult to estimate even the category of value of an asset, the individual may use any generally recognized indication of value provided that the method of valuation is indicated on the disclosure form.

(5) *Liabilities.*—The identity and category of value of each personal liability owed, directly or indirectly, which exceeds $2,500 as of the close of the year. This category applies to all personal loans, whether secured or unsecured, and regardless of the repayment terms or interest rates. Exempted, however, are mortgages secured by real property which is the personal residence of a Member or his spouse in the Washington, D.C. area or in the district; or the principal residence of any other reporting individual or his spouse. Also exempted from disclosure are loans secured by automobiles and obligations to make alimony or child-support payments. A contingent liability (e.g., if the individual co-signs a note) need not be disclosed. Similarly, an individual with an interest in a business, corporation, partnership, etc., need not list a liability of that organization.

(6) *Security transactions.*—The identity, date, and category of value of any transaction, directly or indirectly, in securities or commodity futures during the calendar year (beginning in 1978) which exceeds $1,000 in value. *The first filing to be made in 1978 does not require the reporting of this information.* Exempted are any transactions donating such securities to any tax-exempt organization, as defined in section 501(c)(3) of the IRS Code.

(7) *Real property transactions.*—The identity, date, and category of value of any purchase or sale, directly or indirectly, of any interest in real property which exceeds $1,000 in value as of the date of such purchase or sale. This category requires the reporting of only real property transactions. Any real property held for investment purposes would be listed as a holding under item 4, as described above. As with liabilities owed, transactions involving personal residence property are exempted from disclosure.

Categories of Value.—A detailed net-worth statement is not required under House Rule XLIV. Instead, financial interests and liabilities need be disclosed only by categories of value. The categories of value for items 4–7 are as follows: less than $5,000; between $5,000 and $15,000; between $15,000 and $50,000; between $50,000 and $100,000; and more than $100,000.

Spouse disclosure

Rule XLIV requires disclosure of spouse interests if they are under the "constructive control" of the reporting individual. This

requirement has existed under House Rule XLIV since its original adoption in 1968. As defined by the Committee on Standards of Official Conduct, the financial interests of a spouse are regarded as constructively controlled "if enhancement of those interests would substantially benefit the person reporting. Normally, in the absence of specific property division agreements, trusts, etc., the interests of spouses . . . would be constructively controlled."

In view of the more detailed information now required to be disclosed, the Select Committee believes that clarification of spouse disclosure requirements is necessary.

Accordingly, the financial interests of a spouse should be reported as follows: (1) source, but not amount, of spouse earned income exceeding $1,000; (2) gifts or reimbursements to the spouse, unless received independent of the relationship to the reporting individual, and (3) assets and liabilities of the spouse unless the reporting individual indicates that: (a) he or she neither derives, nor expects to derive, any economic benefit from such interests; and (b) such interests were not obtained in any way from the assets or activities of the reporting individual.

The assets and liabilities of a spouse must be reported in the same manner as those of the reporting individual; however, the person reporting need not identify such items as those of the spouse. The financial interests of a spouse living separate and apart from the reporting individual need not be disclosed.

Advisory Opinion No. 13

SUBJECT: GENERAL INTERPRETATION OF HOUSE RULE XLVII, DEALING WITH LIMITATIONS ON MEMBERS' OUTSIDE EARNED INCOME

1. General

(*a*) *Purpose of rule.*—House Rule XLVII, which was adopted on March 2, 1977 as part of the financial ethics code, limits both the amount of "outside earned income" a Member may have, and also the amount a Member may accept as an honorarium for any single speech, appearance, or article. Two major considerations prompted adoption of the Rule. First, substantial payments to a Member of Congress for rendering "personal services" to outside groups presents a significant and avoidable potential for conflict of interest. Second, it is inconsistent with the concept that being a Member of Congress is a full-time job to permit a Member to have substantial earnings from other employment.

(*b*) *Annual limitation generally.*—Clause 1 of the Rule prohibits a Member from having outside earned income attributable to any calendar year beginning after December 31, 1978 in excess of 15%* of the Member's salary as a U.S. Representative for that year. In order for an item to be counted against this limitation for a particular year: (i) it must be "outside earned income", within the meaning of Rule XLVII, and (ii) it must be attributable to that year. The Rule defines outside earned income to mean "wages, salaries, professional fees, honorariums, and other amounts (exclusive of copy-

*The limit is currently 30% of congressional salary, see H. Res. 305, 97th Congress.

right royalties) received or to be received as compensation for personal services actually rendered, not including the Member's salary as a U.S. Representative".

Outside earned income is attributed to the year in which the Member's right to receive it becomes certain (i.e., under the accrual method) rather than to the year of receipt. Therefore, receipt of income earned during a particular year cannot be deferred to a future year in which the Member has less outside earned income, or until after the Member retires from Congress.* The limitation is not applicable to compensation for personal services rendered prior to January 1, 1979, the effective date of Rule XLVII, or prior to the effective date of the Member's becoming a U.S. Representative, if later. Outside earned income is determined without regard to any community property law. That is, even though under applicable community property law, one-half of any personal service income earned by the Member is deemed to belong to the spouse, all of such income is considered earned income of the Member for purposes of the Rule.

(c) Real facts controlling.—The limitations imposed by Rule XLVII may not be avoided by the characterization or disposition of any payment for services rendered. In all cases, the real facts will control. For example, if a Member's spouse, child, other relative, or trust for benefit of any of them, is paid an amount, however denominated, and the true consideration for the payment is services rendered by the Member, the amount will be deemed outside earned income by the Member. Similarly, the label or characterization placed on a transaction, arrangement or payment by the parties may be disregarded for purposes of the Rule. Thus, if amounts received or to be received by a Member are in fact attributable to any significant extent to services rendered by the Member, the characterization of such amounts as partnership distributive share, dividends, rent, interest, payment for a capital asset, or the like, will not serve to prevent the application of Rule XLVII to such amounts. Moreover, the Rule applies to outside earned income realized in a medium other than money, for example, in property or services or through a bargain purchase or forbearance in consideration of personal services rendered.

In short, income may not be recharacterized in order to circumvent the Rule. Indeed, characterization of income is essentially irrelevant. For purposes of this Opinion, there are two types of income—earned and unearned. If the compensation received is essentially a return on equity, then it would generally not be considered to be earned income. If the income is not a return on equity, then such income would generally be considered to be earned income and subject to the limitation.

When such amounts received or to be received by a Member are designated as salary, fees, or commissions, the overriding presumption is that such amounts, almost by definition, constitute compensation for personal services rendered. An honorarium from a speaking engagement, for example, is obviously outside earned income. With respect to income from business ventures, the Committee is convinced that in the overwhelming majority of cases, there will be

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*Honoraria are now attributable to the year in which received (H. Rule XLVII(2)).

little or no difficulty in determining whether certain income is subject to the Rule. Again, the facts of each individual case will govern applicability of the Rule, but the principles set forth in this Opinion should be followed in making that determination.

2. Outside earned income from business ventures

This Advisory Opinion differentiates between businesses in which both capital and personal services are material income-producing factors and those in which personal services is the only material income-producing factor.

(*a*) *Personal service businesses.*—Where a Member owns or participates in a personal service business, such as a professional practice, in which capital is not a material income-producing factor, his entire share of the profits is deemed to be outside earned income for purposes of the Rule, except to the extent he can demonstrate that his income in fact represents a return on investment. In general, capital is not a material income-producing factor where gross income of the business consists principally of fees, commissions or other compensation for personal services performed by an individual. Thus, the practice of one's profession by a doctor, lawyer, insurance broker, or real estate agent will not, as such, be treated as a business in which capital is a material income-producing factor. Even where the practitioner may have a substantial investment in professional equipment or in the physical plant constituting the office from which he conducts his practice, the capital investment would be regarded as only incidental to the professional practice.

Moreover, the fact that the Member may not personally participate to any substantial extent in the rendering of services to the customers or clients of the business, all such services being performed by assistants or associates, would not serve to justify classification of his share of the business income as other than earned income. If a Member shares in the profits of a personal service organization without being required to perform any significant productive services, absent a strong showing to the contrary, it will be presumed that the Member is being compensated for attracting or retaining customers or clients, and such income is considered outside earned income.

Law practices.—Since there are a number of attorneys serving in the House of Representatives, for purposes of example, application of the Rule to practice of law is specifically addressed in this Opinion. Those Members who currently maintain an active affiliation with a law firm may now wish to enter into a buy-out agreement with their partners in order to liquidate their equity in the firm. This is perfectly appropriate. Amounts received or receivable by a Member in payment for his interest in a law firm or similar organization upon his retirement from it would not constitute outside earned income so long as the amounts payable do not, in effect, represent a continuing participation in the law firm and the total amount payable is not in excess of the fair market value of the Member's interest. Normally such arrangements call for fixed payments at annual or more frequent intervals over a period of years. In some cases, however, the retiring partner and those continuing the business are unable to agree on a value for one or more assets of the business, such as contingent fee cases or accounts receivable

of dubious value, and the buy-out agreement may accordingly provide that the retiring partner will be paid a share of such items, if, as and when they are collected.

Payments to a Member under a buy-out agreement will not be deemed to be outside earned income where the arrangements are entered into in good faith and agreed to by all the partners, and reflect the usual and customary value of the equity generally accorded to partners in similar law practices in the same geographic area. A buy-out agreement should also be reasonably calculated to avoid the Member's participation in post-withdrawal profits. In general, the proceeds resulting from a buy-out agreement are taxed as capital gains. If such an agreement is not limited to liquidation of the Member's equity in the firm, and includes payments which might be taxable as earned income, any such payments under the agreement might be subject to the earned income limitation.

The Committee notes that Rule XLVII does not prohibit continued affiliation with a law firm, as does the Senate Rule on outside earned income. However, those Members who wish to retain an interest in a law firm after the effective date of the Rule may be required to lessen their active involvement in the firm because of the earned income limitation. Accordingly, the Committee makes reference to the American Bar Association Code of Ethics, which states in part: "A lawyer who assumes . . . a legislative post . . . shall not permit his name to remain in the name of a law firm or to be used in the professional notices of the firm during any significant period in which he is not actively and regularly practicing law as a member of the firm." (ABA Disciplinary Rule 2-102B). Depending upon the particular circumstances involved in each case, this provision may have some bearing on a Member's continued affiliation with a law firm.

For those Members who will choose to remain formally affiliated with a law firm, some of their income from the law firm may be in the form of return on equity. In recognition of the principle that any capital investment in a business is entitled to a reasonable return, this Opinion provides that a Member may treat as unearned income a portion of his share of the profits from the law firm, as from any other personal service business, equal to interest computed at 10 percent per annum on his investment in the business assets (after adjustment to exclude investment income and expenses, if any). For purposes of this 10 percent computation, the Member's investment in business assets will ordinarily be represented by the average balance of his capital account during the year, where the business interest is a proprietorship or partnership, or by the average book value of his stock, where the investment is in a subchapter S corporation. In general, a Member's equity in the firm would not exceed the amount he would receive pursuant to a buy-out agreement, and should be calculated to avoid any benefit accruing to the Member from increased profits subsequent to the effective date of the Rule.

(b) Businesses where capital is a material income-producing factor.—Capital is a material income-producing factor if a substantial portion of the gross income of the business is attributable to the employment of capital, as reflected, for example, by a substantial investment in inventories, plant, machinery or other produc-

tive equipment. This Opinion discusses the application of the Rule in such cases to income from a fully taxable corporation and income from an unincorporated business or subchapter S corporation.

(1) Taxable corporations

If a Member renders services to a fully taxable business corporation, he will not be deemed to realize outside earned income from such services beyond the amount of salary or other form of extra compensation designated as consideration for the personal services rendered. In those cases where the Member's sole financial interest is stock in the corporation, an increase in the net assets of the corporation would not be considered to be subject to the limitation. An increase in the value of stock or other property is not ordinarily treated as earned income either for tax purposes or under generally accepted accounting principles; and any increase in the corporation's net profits would be subject first to corporate income tax and then to personal income tax before the Member receives any resulting increment to his wealth through a dividend or sale of his stock. The foregoing has no application, of course, to income which a Member earns through his personal efforts in dealings with third parties but causes to be paid to a corporation and then distributed to him. For example, if a Member incorporates himself for the purpose of conducting a speaking business, and all fees for his speaking engagements are paid to the corporation from which he then draws "profits", all such amounts would be considered to be outside earned income.

In sum, if a Member renders services to a taxable corporation, only the salary or other compensation he receives for those services would be subject to the limitation, but not any increase in the corporation's assets or his share of the profits. This ruling is consistent with the intent of the Commission on Administrative Review which recommended the limitation on outside earned income. In its report (Document No. 95–73), the Commission stated that ". . . Members should be able to render personal services to manage or protect their equity . . . without having to allocate these personal services toward the 15 percent limitation."

(2) Subchapter S corporation, partnership, unincorporated business

In those cases where the Member has an ownership interest in a business for which he also performs services, as in a subchapter S corporation or a partnership, some part of his share of the profits of that business may reflect the value of his services, and thus would be considered outside earned income. The determining factor is whether the Member's personal services generate significant income for the business. Of course, if the Member receives formal compensation from the business, for example, payments designated as salary or fees, such amounts would be considered earned income. Additionally, in those cases where other partners or associates are providing capital and managerial expertise, and the Member's principal role is to refer clients to the business or to help retain existing customers or clients, the Member would be deemed to be rendering income-producing services, even though the actual time involved might be minimal. However, if the Member is engaged

primarily in the general oversight and management or protection of his investment, his services would not be deemed to generate significant income. Such non-income generating services would include consultation with other management officials, analysis of financial and other reports, participation in formal meetings, and making decisions concerning the general operations and investment strategy of the business.

The application of the Rule to the various types of business organizations as discussed in this Opinion applies equally to a business owned or controlled by the Member or his family. Again, the determining factor is whether or not the personal services of the Member actually generate any significant income for the business. In those situations where the services rendered by the Members are incidental and do not generate significant income, no part of his share of the profits or any increase in the assets of the business would be deemed to be outside earned income.

The Committee emphasizes that the definition of earned income in Rule XLVII, which excludes amounts received by a Member from a family controlled business "so long as the personal services actually rendered by the Member . . . do not generate a significant amount of income," was simply intended to assure Members that they could continue to make decisions and take actions necessary to manage or protect their equity in a family trade or business, and would not be forced to divest themselves of their family business interests. As with any business, a Member would not be required to allocate his share of the profits of the business as outside earned income when the facts and circumstances show that the income is in reality a return on investment. For example, if the Member owns a hardware store and the services he renders are incidental, such as occasionally serving customers, the income received from the business is basically a return on equity, (i.e., profits from the sale of hardware goods) and is not generated by the Member's services. Similarly, if the Member's family owns a farm and the Member gives overall direction to the management of the business, the income received from the farming operations is not generated by the Member's personal services, but rather is basically a return on equity from the sale of crops or dairy products. These types of businesses are distinguishable from a personal service business where income is essentially produced by the services of the individual affiliated with the organization.

(3) When income is accountable

(*a*) *Income from pre-effective date services.*—The Rule excludes from earned income any compensation derived by a Member for personal services actually rendered prior to the effective date of the Rule (January 1, 1979) or prior to the effective date of the Member's becoming a U.S. Representative, if later. This provision would serve to exclude from the limitation, for example, most renewal commissions paid to a Member with respect to life insurance policies sold by him prior to the effective date, or similar commissions received by a Member with respect to pre-effective date leases in which the Member was a leasing agent. In most such arrangements, payment of the commission is not contingent upon the performance of any future services by the recipient; the only contin-

gency is that the insured or lessee continue to pay premiums or rent, as the case may be. The pre-effective date exclusion would also apply to a fee received by a lawyer-Member after the effective date where all the work had been done prior to the effective date. However, this exclusion would not apply to income derived from the continuing or future business of clients brought into the firm prior to the effective date of the Rule.

(b) *Application of limitation to part years.*—Where an individual becomes a Member during any calendar year beginning after December 31, 1978, the Rule applies only to outside earned income of the new Member attributable to periods after the effective date of his becoming a Member. For the balance of the calendar year in which he becomes a Member, the applicable limitation will be 15% of the Member's salary as a U.S. Representative for that part year, and only outside earned income attributable to that part is counted against the limitation.

(4) Other provisions

(a) Payments attributed to deferred compensation plans.—Amounts received by a Member from a tax-qualified pension, profit-sharing or stock bonus plan are not treated as outside earned income, as provided in the Rule, nor are contributions to such a plan counted as outside earned income. Amounts received by a Member from a non-qualified deferred compensation plan which were earned in a year prior to the effective date of the Rule are not outside earned income for the year received under the principle explained in Section 3(a), provided no part of the consideration for such payments is current services. Amounts set aside for a Member under a non-qualified deferred compensation plan for services rendered after the effective date of the Rule will generally constitute outside earned income of the Member for that year, even though they will not be received until a later year, unless receipt is subject to a substantial risk of forfeiture.

(b) Assignment of income to charities.—Notwithstanding the general holding of this Opinion that a Member cannot deflect the application of the Rule by assigning to another income which he in fact earned through rendering services, earned income assigned by a Member to a tax-exempt charity will not be counted as part of the Member's outside earned income, provided the Member is not a "disqualified person" with respect to the recipient organization within the meaning of section 4946(a) of the Internal Revenue Code. For purposes of the Rule, such income would not be deemed to have been "received" by the Member provided that he did not personally benefit in any way from such income.

*(c) Honoraria.**—Clause 2 of Rule XLVII provides that no member may, in any calendar year beginning after December 31, 1978, accept any honorarium of more than $750 in value for any single speech, appearance, or article by the Member. In computing the amount of any honorarium for purposes of the $750 limitation, there shall not be taken into account the reimbursement of any actual and necessary travel expenses incurred by the Member in

*Honoraria limits are now governed by statute, 2 U.S.C. § 441i, which set a per-event limit of $2000 for honorarium.

earning the honorarium. To the extent any such travel expenses are not reimbursed, the amount of the honorarium shall be reduced accordingly. Payment of actual and necessary travel expenses of a spouse (or another family member) accompanying the Member is also excluded from the limitation, consistent with the Federal Election Commission regulations governing receipt of honoraria.

Under Section 1(b) of this Opinion, outside earned income is attributed to the year in which the Member's right to receive it becomes certain rather than to the year of receipt, (i.e., the accrual method). With respect to honoraria, however, the accrual method could cause some particular confusion in the case of a Member giving a speech in December but not receiving actual payment until January. Because of the potential problems that could arise, Members would have the limited option of using a cash basis for receipt of honoraria for purposes of the Rule.

5. Code of Ethics for Government Service, 72 Stat. Part 2, B 12

CODE OF ETHICS FOR GOVERNMENT SERVICE

Resolved by the House of Representatives (the Senate concurring), That it is the sense of the Congress that the following Code of Ethics should be adhered to by all Government employees, including officeholders:

CODE OF ETHICS FOR GOVERNMENT SERVICE

Any person in Government service should:

1. Put loyalty to the highest moral principles and to country above loyalty to persons, party, or Government department.
2. Uphold the Constitution, laws, and legal regulations of the United States and of all governments therein and never be a party to their evasion.
3. Give a full day's labor for a full day's pay; giving to the performance of his duties his earnest effort and best thought.
4. Seek to find and employ more efficient and economical ways of getting tasks accomplished.
5. Never discriminate unfairly by the dispensing of special favors or privileges to anyone, whether for remuneration or not; and never accept, for himself or his family, favors or benefits under circumstances which might be construed by reasonable persons as influencing the performance of his governmental duties.
6. Make no private promises of any kind binding upon the duties of office, since a Government employee has no private word which can be binding on public duty.
7. Engage in no business with the Government, either directly or indirectly, which is inconsistent with the conscientious performance of his governmental duties.
8. Never use any information coming to him confidentially in the performance of governmental duties as a means for making private profit.
9. Expose corruption wherever discovered.
10. Uphold these principles, ever conscious that public office is a public trust.

(Passed July 11, 1958.)

6. Honoraria Limits—Public Law 98-63, Section 908

SEC. 908. (a) For the purposes of this section—

(1) "charitable organization" means an organization described in section 170(c) of the Internal Revenue Code of 1954;

(2) "honorarium" means a payment of money or anything of value to a Member for an appearance, speech, or article, by the Member; but there shall not be taken into account for the purposes of this section any actual and necessary travel expenses, incurred by the Member, and spouse or an aide to the extent that such expenses are paid or reimbursed by any other person, and the amount otherwise determined shall be reduced by the amount of any such expenses to the extent that such expenses are not paid or reimbursed;

(3) "Member" means a United States Senator, a Member of the House of Representatives, a Delegate to the House of Representatives, or the Resident Commissioner from Puerto Rico; and

(4) "travel expenses" means with respect to a Member, and spouse or an aide, the cost of transportation, and the cost of lodging and meals while away from his or her residence or the metropolitan area of Washington, District of Columbia.

(b)(1) Notwithstanding any other provision of law, except as provided in paragraph (2), on and after January 1, 1984, a Member shall not accept honoraria which are attributable to any calendar year and total more than the amount that is equal to 30 percent of the aggregate salary paid to such Member for service as a Member during such calendar year.

(2) An individual who becomes a Member on a date after the first day of a calendar year shall not accept honoraria which are attributable to the remaining portion of that calendar year on and after the date such individual becomes a Member and total more than the amount that is equal to 30 percent of the aggregate salary paid to the Member for service as a Member during such calendar year.

(3) For the purposes of this subsection, an honorarium shall be attributable to the period or calendar year in which payment is received.

(c) Any honorarium, or any part thereof paid by or on behalf of a Member to a charitable organization shall be deemed not to be accepted for the purposes of subsection (b).

(d) Notwithstanding any other provision of law, in the case of a Member who is serving in the office or position of Senator, President pro tempore of the Senate, Majority Leader of the Senate, or Minority Leader of the Senate during a calendar year, the annual rate of pay that is paid to such Member for such service shall not be less than the annual rate of pay payable for such position on December 17, 1982, increased by 15 percent and rounded in accordance with section 5318 of title 5, United States Code.

(e) The Commission on Executive, Legislative, and Judicial Salaries shall include in the first report required to be submitted by it after the date of the enactment of this Act a recommendation for

an appropriate salary for Members, which recommendation shall assume a prohibition on the receipt of honoraria by Members.

(f) Subsection (d) of this section shall take effect with respect to service as a Member performed on or after July 1, 1983.

7. 2 U.S.C. sec. 86

§ 86. Division of Salaries of Employees of House of Representatives

It shall not be lawful to appoint or employ in any position under the House of Representatives more than one person at any one time, or to require or permit any such person to divide with another any portion of his salary or compensation while so employed.

(Mar. 3, 1901, c. 830, § 1, 31 Stat. 968.)

8. 2 U.S.C. sec. 87

§ 87. Requiring or Permitting Employees of House of Representatives To Sublet Duties

It shall not be lawful to require or permit any person in the employ of the House of Representatives to sublet to another the discharge of any portion of the duties of the position to which he is appointed.

(Mar. 3, 1901, c. 830, § 1, 31 Stat. 968.)

Cross References: Subletting duties of an employee of Senate or House forbidden, see section 101 of this title.

9. 2 U.S.C. sec. 101

§ 101. Subletting duties of employees of Senate or House of Representatives

No employee of Congress, either in the Senate or House, shall sublet to, or hire, another to do or perform any part of the duties or work attached to the position to which he was appointed.

(Mar. 2, 1895, c. 177 § 1, 28 Stat. 771.)

10. 2 U.S.C. sec. 439a

§ 439a. Use of contributed amounts for certain purposes

Amounts received by a candidate as contributions that are in excess of any amount necessary to defray his expenditures, and any other amounts contributed to an individual for the purpose of supporting his or her activities as a holder of Federal office, may be used by such candidate or individual, as the case may be, to defray any ordinary and necessary expenses incurred in connection with his or her duties as a holder of Federal office, may be contributed to any organization described in section 170(c) of title 26, or may be used for any other lawful purpose, including transfers without limitation to any national, State, or local committee of any political party; except that, with respect to any individual who is not a Senator or Representative in, or Delegate or Resident Commissioner to, the Congress on January 8, 1980, no such amounts may be converted by any person to any personal use, other than to defray any ordinary and necessary expenses incurred in connection with his or her duties as a holder of Federal office.

11. 2 U.S.C. sec. 441i

§ 441i. Acceptance of excessive honorariums—Prohibited practices

(a) No person while an elected or appointed officer or employee of any branch of the Federal Government shall accept any honorarium of more than $2,000 (excluding amounts accepted for actual travel and subsistence expenses for such person and his spouse or an aide to such person, and excluding amounts paid or incurred for any agents' fees or commissions) for any appearance, speech, or article; or

PAYMENT OF HONORARIUM TO CHARITABLE ORGANIZATION; DEFINITION

(b) Any honorarium, or any part thereof, paid by or on behalf of an elected or appointed officer or employee of any branch of the Federal Government to a charitable organization shall be deemed not to be accepted for the purposes of this section.

AGGREGATE AMOUNT RECEIVED DURING ANY CALENDAR YEAR

(c) For purposes of determining the aggregate amount of honorariums received by a person during any calendar year, amounts returned to the person paying an honorarium before the close of the calendar year in which it was received shall be disregarded.

TIME OF ACCEPTANCE OF HONORARIUM

(d) For purposes of paragraph (2) of subsection (a) of this section, an honorarium shall be treated as accepted only in the year in which that honorarium is received.

(As amended Pub. L. 98-63, section 908(g), July 30, 1983, 97 Stat. 338).

12. 2 U.S.C. sec. 701 et seq.

PUBLIC LAW 95-521, 95TH CONGRESS, AS AMENDED BY PUBLIC LAW 96-19

TITLE I—LEGISLATIVE PERSONNEL FINANCIAL DISCLOSURE REQUIREMENTS

COVERAGE

SEC. 101. (a) Each Member in office on May 15 of a calendar year shall file on or before May 15 of that calendar year a report containing the information as described in section 102(a).

(b)(1) Any individual who is an officer or employee of the legislative branch described in subsection (e) during any calendar year and performs the duties of his position or office for a period in excess of sixty days in that calendar year shall file on or before May 15 of the succeeding year a report containing the information described in section 102(a) if such individual is or will be such an officer or employee on such May 15.

(2) Any individual whose employment as an officer or employee described in subsection (e) is terminated in any calendar year may be required—

(A) under the rules of the House of Representatives, if such individual would, but for such termination, file a report with the Clerk pursuant to section 103(a), or

(B) under the rules of the Senate, if such individual would, but for such termination, file a report with the Secretary pursuant to section 103(b),

to file a financial disclosure report covering (i) that part of such calendar year during which such individual was employed as such an officer or employee, and (ii) the preceding calendar year if the report required by paragraph (1) covering that calendar year has not been filed.

(c) Within thirty days of assuming the position of an officer or employee described in subsection (e), an individual other than an individual who was employed in the legislative branch immediately before he assumed such position, shall file a report containing the information as described in section 102(b) unless the individual has left another position described in subsection (e) within thirty days prior to assuming his new position. The provisions of the preceding sentence shall not apply to an individual who, as determined by the designated committee of the Senate or the designated committee of the House, as appropriate, is not reasonably expected to perform the duties of his office or position for more than sixty days in a calendar year, except that if he performs the duties of his office or position for more than sixty days in a calendar year, the report required by the preceding sentence shall be filed within fifteen days of the sixtieth day. This subsection shall take effect on January 1, 1979.

(d) Within thirty days of becoming a candidate in a calendar year for any election for the office of Member, or on or before May 15 of that calendar year, which ever is later, but in no event later than seven days prior to the election, and on or before May 15 of each successive year the individual continues to be a candidate, an individual shall file a report containing the information as described in section 102(b). Notwithstanding the preceding sentence, in any calendar year in which an individual continues to be a candidate for any office but all elections for such office relating to such candidacy were held in prior calendar years, such individual need not file a report unless he becomes a candidate for another vacancy in that office or another office during that year.

(e) The officers and employees referred to in subsections (b) and (c) are—

(1) each officer or employee of the legislative branch who is compensated at a rate equal to or in excess of the annual rate of basic pay in effect for grade GS–16 of the General Schedule; and

(2) at least one principal assistant designated for purposes of this section by each Member who does not have an employee compensated at a rate equal to or in excess of the annual rate of basic pay in effect for grade GS–16 of the General Schedule.

For the purposes of this title, the legislative branch includes the Architect of the Capitol, the Botanic Gardens, the Congressional Budget Office, the Cost Accounting Standards Board, the General Accounting Office, the Government Printing Office, the Library of

Congress, the Office of the Attending Physician, National Comission on Air Quality, and the Office of Technology Assessment.

(f) Reasonable extensions of time for filing any report may be granted by the designated committee of the Senate with respect to those filing with the Secretary and by the designated committee of the House of Representatives with respect to those filing with the Clerk but in no event may the extension granted to a Member or candidate result in a required report being filed later than seven days prior to an election involving the Member or candidate. If the day on which a report is required to be filed falls on a weekend or holiday, the report may be filed on the next business day.

(g) Notwithstanding the dates specified in subsection (d) of this section, an individual who is a candidate in calendar year 1978 shall file the report required by such subsection not later than November 1, 1978, except that a candidate for the Senate who has filed a report as of such date pursuant to the rules of the Senate need not file the report required by subsection (d) of this section.

(h) The designated committee of the House of Representatives, or the designated committee of the Senate, as the case may be, may grant a publicly available request for a waiver of any reporting requirement under this section for an individual who is expected to perform or has performed the duties of his office or position for less than one hundred and thirty days in a calendar year, but only if such committee determines that—

(1) such individual is not a full-time employee of the Government,

(2) such individual is able to provide services specially needed by the Government,

(3) it is unlikely that the individual's outside employment or financial interests will create a conflict of interest, and

(4) public financial disclosure by such individual is not necessary in the circumstances.

CONTENTS OF REPORTS

SEC. 102. (a) Each report filed pursuant to subsections (a) and (b) of section 101 shall include a full and complete statement with respect to the following:

(1)(A) The source, type, and amount or value of income (other than income referred to in subparagraph (B)) from any source (other than from current employment by the United States Government), and the source, date, and amount of honoraria from any source, received during the preceding calendar year, aggregating $100 or more in value.

(B) The source and type of income which consists of dividends, interest, rent, and capital gains, received during the preceding calendar year which exceeds $100 in amount or value, and an indication of which of the following categories the amount or value of such item of income is within:

(i) not more than $1,000,

(ii) greater than $1,000 but not more than $2,500,

(iii) greater than $2,500 but not more than $5,000,

(iv) greater than $5,000 but not more than $15,000,

(v) greater than $15,000 but not more than $50,000,

(vi) greater than $50,000 but not more than $100,000, or
(vii) greater than $100,000.

(2)(A) The identity of the source and a brief description of any gifts of transportation, lodging, food, or entertainment aggregating $250 or more in value received from any source other than a relative of the reporting individual during the preceding calendar year, except that any food, lodging, or entertainment received as personal hospitality of any individual need not be reported, and any gift with a fair market value of $35 or less need not be aggregated for purposes of this subparagraph.

(B) The identity of the source, a brief description, and the value of all gifts other than transportation, lodging, food, or entertainment aggregating $100 or more in value received from any source other than a relative of the reporting individual during the preceding calendar year, except that any gift with a fair market value of $35 or less need not be aggregated for purposes of this subparagraph.

(C) The identity of the source and a brief description or reimbursements received from any source aggregating $250 or more in value and received during the preceding calendar year.

(D) In an unusual case, a gift need not be aggregated under subparagraph (A) or (B) if a publicly available request for a waiver is granted.

(3) The identity and category of value of any interest in property held during the preceding calendar year in a trade or business, or for investment or the production of income, which has a fair market value which exceeds $1,000 as of the close of the preceding calendar year, excluding any personal liability owed to the reporting individual by a relative or any deposits aggregating $5,000 or less in a personal savings account. For purposes of this paragraph, a personal savings account shall include any certificate of deposit or any other form of deposit in a bank, savings and loan association, credit union, or similar financial institution.

(4) The identity and category of value of the total liabilities owed to any creditor other than a relative which exceed $10,000 at any time during the preceding calendar year, excluding—

(A) any mortgage secured by real property which is a personal residence of the reporting individual or his spouse;

(B) any loan secured by a personal motor vehicle, household furniture, or appliances, which loan does not exceed the purchase price of the item which secures it.

With respect to revolving charge accounts, only those with an outstanding liability which exceeds $10,000 as of the close of the preceding calendar year need be reported under this paragraph.

(5) Except as provided in this paragraph, a brief description, the date, and category of value of any purchase, sale, or exchange during the preceding calendar year which exceeds $1,000—

(A) in real property, other than property used solely as a personal residence of the reporting individual or his spouse; or

(B) in stocks, bonds, commodities futures, and other forms of securities.

Reporting is not required under this paragraph of any transaction solely by and between the reporting individual, his spouse, or dependent children.

(6) The identity of all positions held on or before the date of filing during the current calendar year as an officer, director, trustee, partner, proprietor, representative, employee or consultant of any corporation, company, firm, partnership, or other business enterprise, any nonprofit organization, any labor organization, or any educational or other institution other than the United States. This paragraph shall not require the reporting of positions held in any religious, social, fraternal, or political entity and positions solely of an honorary nature.

(7) A description of the date, parties to, and terms of any agreement or arrangement with respect to (A) future employment; (B) a leave of absence during the period of the reporting individual's Government service; (C) continuation of payments by a former employer other than the United States Government; and (D) continuing participation in an employee welfare or benefit plan maintained by a former employer.

(b) Each report filed pursuant to subsections (c) and (d) of section 101 shall include a full and complete statement with respect to the information required by—

(1) paragraph (1) of subsection (a) for the year of filing and the preceding calendar year,

(2) paragraphs (3) and (4) of subsection (a) as of the date specified in the report but which is less than thirty-one days before the filing date, and

(3) paragraph (6) and, in the case of reports filed under section 101(c), paragraph (7) of subsection (a) as of the filing date but for periods described in such paragraphs.

(c)(1) The categories for reporting the amount of value or the items covered in paragraphs (3), (4) and (5) of subsection (a) are as follows:

(A) not more than $5,000;
(B) greater than $5,000 but not more than $15,000;
(C) greater than $15,000 but not more than $50,000;
(D) greater than $50,000 but not more than $100,000;
(E) greater than $100,000 but not more than $250,000; and
(F) greater than $250,000.

(2) For the purposes of paragraph (3) of subsection (a) if the current value of an interest in real property (or an interest in a real estate partnership) is not ascertainable without an appraisal, an individual may list (A) the date of purchase and the purchase price of the interest in the real property, or (B) the assessed value of the real property for tax purposes, adjusted to reflect the market value of the property used for the assessment if the assessed value is computed at less than 100 percent of such market value, but such individual shall include in his report a full and complete descrip-

tion of the method used to determine such assessed value, instead of specifying a category of value pursuant to paragraph (1) of this subsection. If the current value of any other item required to be reported under paragraph (3) of subsection (a) is not ascertainable without an appraisal, such individual may list the book value of a corporation whose stock is not publicly traded, the net worth of a business partnership, the equity value of an individually owned business, or with respect to other holdings, any recognized indication of value, but such individual shall include in his report a full and complete description of the method used in determining such value. In lieu of any value referred to in the preceding sentence, an individual may list the assessed value of the item for tax purposes, adjusted to reflect the market value of the item used for the assessment if the assessed value is computed at less than 100 percent of such market value, but a full and complete description of the method used in determining such assessed value shall be included in the report.

(d)(1) Except as provided in the last sentence of this paragraph, each report shall also contain information listed in paragraphs (1) through (5) of subsection (a) respecting the spouse or dependent child of the reporting individuals as follows:

(A) The source of items of earned income earned by a spouse from any person which exceed $1,000 and, with respect to a spouse or dependent child, all information required to be reported in subsection (a)(1)(B) with respect to income derived from any asset held by the spouse or dependent child and reported pursuant to paragraph (3). With respect to earned income, if the spouse is self-employed in business or a profession, only the nature of such business or profession need be reported.

(B) In the case of any gifts received by a spouse which are not received totally independent of the spouse's relationship to the reporting individual, the identity of the source and a brief description of gifts of transportation, lodging, food, or entertainment and a brief description and the value of other gifts.

(C) In the case of any reimbursements received by a spouse which are not received totally independent of the spouse's relationship to the reporting individual, the identity of the source and a brief description of each such reimbursement.

(D) In the case of items described in paragraphs (3) through (5), all information required to be reported under these paragraphs other than items (i) which the reporting individual certifies represent the spouse's or dependent child's sole financial interest or responsibility and which the reporting individual has no knowledge of, (ii) which are not in any way, past or present, derived from the income, assets, or activities of the reporting individual, and (iii) from which the reporting individual neither derives, nor expects to derive, any financial or economic benefit.

Each report referred to in subsection (b) of this section shall, with respect to the spouse and dependent child of the reporting individual, only contain information listed in paragraphs (1), (3), and (4) of subsection (a), as specified in this paragraph.

(2) No report shall be required with respect to a spouse living separate and apart from the reporting individual with the intention of terminating the marriage or providing for permanent separation; or with respect to any income or obligations of an individual arising from the dissolution of his marriage or the permanent separation from his spouse.

(e)(1) Except as provided in paragraph (2), each reporting individual shall report the information required to be reported pursuant to subsections (a) and (b) of this section with respect to the holdings of and the income from a trust or other financial arrangement from which income is received by, or with respect to which a beneficial interest in principal or income is held by, such individual, his spouse, or any dependent child.

(2) A reporting individual need not report the holdings of or the source of income from any of the holdings of—

(A) any qualified blind trust (as defined in paragraph (3)); or

(B) a trust—

(i) which was not created directly by such individual, his spouse, or any dependent child, and

(ii) the holdings or sources of income of which such individual, his spouse, and any dependent child have no knowledge of,

but such individual shall report the category of the amount of income received by him, his spouse, or any dependent child from the trust under subsection (a)(1)(B) of this section.

(3) For purposes of this subsection, the term "qualified blind trust" includes any trust in which a reporting individual, his spouse, or any dependent child has a beneficial interest in the principal or income, and which meets the following requirements:

(A) The trustee of the trust is a financial institution, an attorney, a certified public accountant, a broker, or an investment adviser, who (in the case of a financial institution or investment company, any officer or employee involved in the management or control of the trust who)—

(i) is independent of and unassociated with any interested party so that the trustee cannot be controlled or influenced in the administration of the trust by any interested party,

(ii) is not or has not been an employee of any interested party, or any organization affiliated with any interested party and is not a partner of, or involved in any joint venture or other investment with, any interested party, and

(iii) is not a relative of any interested party.

(B) Any asset transferred to the trust by an interested party is free of any restriction with respect to its transfer or sale unless such restriction is expressly approved by the supervising ethics office of the reporting individual.

(C) The trust instrument which establishes the trust provides that—

(i) except to the extent provided in subparagraph (B) of this paragraph, the trustee in the exercise of his authority and discretion to manage and control the assets of the trust shall not consult or notify any interested party;

(ii) the trust shall not contain any asset the holding of which by an interested party is prohibited by any law or regulation;

(iii) the trusteee shall promptly notify the reporting individual and his supervising ethics office when the holdings of any particular asset transferred to the trust by any interested party are disposed of or when the value of such holding is less than $1,000;

(iv) the trust tax return shall be prepared by the trustee or his designee, and such return and any information relating thereto (other than the trust income summarized in appropriate categories necessary to complete an interested party's tax return), shall not be disclosed to any interested party;

(v) an interested party shall not receive any report on the holdings and sources of income of the trust, except a report at the end of each calendar quarter with respect to the total cash value of the interest of the interested party in the trust or the net income or loss of the trust or any reports necessary to enable the interested party to complete an individual tax return required by law or to provide the information required by subsection (a)(1)(B) of this section but such report shall not identify any asset or holding;

(vi) except for communications which solely consist of requests for distributions of cash or other unspecified assets of the trust, there shall be no direct or indirect communication between the trustee and an interested party with respect to the trust unless such communication is in writing and unless it relates only (I) to the general financial interest and needs of the interested party (including, but not limited to, an interest in maximizing income or long-term capital gain), (II) to the notification of the trustee of a law or regulation subsequently applicable to the reporting individual which prohibits the interested party from holding an asset, which notification directs that the asset not be held by the trust, or (III) to directions to the trustee to sell all of an asset initially placed in the trust by an interested party which in the determination of the reporting individual creates a conflict of interest or the appearance thereof due to the subsequent assumption of duties by the reporting individual (but nothing herein shall require any such direction); and

(vii) the interested parties shall make no effort to obtain information with respect to the holdings of the trust, including obtaining a copy of any trust tax return filed or any information relating thereto except as otherwise provided in this subsection.

(D) The proposed trust instrument and the proposed trustee is approved by the reporting individual's supervising ethics office.

For purposes of this subsection "interested party" means a reporting individual, his spouse, and any dependent child if the reporting individual, his spouse, or dependent child has a beneficial interest

in the principal or income of a qualified blind trust; "broker" has the meaning set forth in section 3(a)(4) of the Securities and Exchange Act of 1934 (15 U.S.C. 78c(a)(4)); "investment adviser" includes any investment adviser who, as determined under regulations prescribed by the supervising ethics office, is generally involved in his role as such an adviser in the management or control of trusts; and "supervising ethics office" means the designated committee of the House of Representatives for those who file the reports required by this title with the Clerk and the designated committee of the Senate for those who file the reports required by this title with the Secretary.

(4) An asset placed in a trust by an interested party shall be considered a financial interest of the reporting individual, for the purposes of section 208 of title 18, United States Code, and any other conflict of interest statutes or regulations of the Federal Government, until such time as the reporting individual is notified by the trustee that such asset has been disposed of, or has a value of less than $1,000.

(5)(A) The reporting individual shall, within thirty days after a qualified blind trust is approved by his supervising ethics office, file with such office a copy of—

(i) the executed trust instrument of such trust (other than those provisions which relate to the testimentary disposition of the trust assets), and

(ii) a list of the assets which were transferred to such trust, including the category of value of each asset as determined under subsection (c)(1) of this section.

(B) The reporting individual shall, within thirty days of transferring an asset (other than cash) to a previously established qualified blind trust, notify his supervising ethics office of the identity of each such asset and the category of value of each asset as determined under subsection (c)(1) of this section.

(C) Within thirty days of the dissolution of a qualified blind trust, a reporting individual shall—

(i) notify his supervising ethics office of such dissolution, and

(ii) file with such office a copy of a list of the assets of the trust at the time of such dissolution and the category of value under subsection (c) of this subsection of each such asset.

(D) Documents filed under subparagraphs (A), (B), and (C) of this paragraph and the lists provided by the trustees of assets placed in the trust by an interested party which have been sold shall be made available to the public in the same manner as a report is made available under section 104, and the provisions of that section shall apply with respect to such documents and lists.

(E) A copy of each written communication with respect to the trust under paragraph (3)(C)(vi) shall be filed by the person initiating the communication with the reporting individual's supervising ethics office within five days of the date of the communication.

(6)(A) A trustee of a qualified blind trust shall not knowingly or negligently (i) disclose any information to an interested party with respect to such trust that may not be disclosed under paragraph (3) of this subsection; (ii) acquire any holding the ownership of which is prohibited by the trust instrument; (iii) solicit advice from any interested party with respect to such trust, which solicitation is

prohibited by paragraph (3) of this subsection or the trust agreement; or (iv) fail to file any document required by this subsection.

(B) A reporting individual shall not knowingly or negligently (i) solicit or receive any information with respect to a qualified blind trust of which he is an interested party that may not be disclosed under paragraph (3)(C) of this subsection, or (ii) fail to file any document required by this subsection.

(C)(i) The Attorney General may bring a civil action in any appropriate United States District Court against any individual who knowingly and willfully violates the provisions of subparagraph (A) or (B) of this paragraph. The court in which such action is brought may assess against such individual a civil penalty in any amount not to exceed $5,000.

(ii) The Attorney General may bring a civil action in any appropriate United States District Court against any individual who negligently violates the provisions of subparagraph (A) or (B) of this paragraph. The court in which such action is brought may assess against such individual a civil penalty in any amount not to exceed $1,000.

(7) Any trust which is in existence prior to the date of the enactment of this Act shall be considered a qualified blind trust if—

(A) the supervising ethics office determines that the trust was a good faith effort to establish a blind trust;

(B) the previous trust instrument is amended or, if such trust instrument does not by its terms permit amendment, all parties to the trust instrument, including the reporting individual and the trustee, agree in writing that the trust shall be administered in accordance with the requirements of paragraph (3)(C) and a trustee is (or has been) appointed who meets the requirements of paragraph (3); and

(C) a copy of the trust instrument (except testamentary provisions), a list of the assets previously transferred to the trust by an interested party and the category of value of each such asset at the time it was placed in the trust, and a list of assets previously placed in the trust by an interested party which have been sold are filed and made available to the public as provided under paragraph (5) of this subsection.

(f) Political campaign funds, including campaign receipts and expenditures, need not be included in any report filed pursuant to this title.

(g) A report filed pursuant to subsection (a) or (b) of section 101 need not contain the information described in subparagraphs (A), (B), and (C) of subsection (a)(2) with respect to gifts and reimbursements received in a period when the reporting individual was not a Member or an officer or employee of the Federal Government.

FILING OF REPORTS; DUTIES OF CLERK AND SECRETARY

SEC. 103. (a) The reports required by section 101 of Representatives, Delegates to Congress, the Resident Commissioner from Puerto Rico, officers and employees of the House, candidates seeking election to the House, and officers and employees of the Architect of the Capitol, the Botanic Gardens, the Congressional Budget

Office, the Government Printing Office, and the Library of Congress shall be filed with the Clerk.

(b) The reports required by section 101 of Senators, officers and employees of the Senate, candidates seeking election to the Senate, and officers and employees of the General Accounting Office, the Cost Accounting Standards Board, the Office of Technology Assessment, National Commission on Air Quality, and the Office of the Attending Physician shall be filed with the Secretary.

(c) A copy of each report filed by a Member or an individual who is a candidate for the office of Member shall be sent by the Clerk or Secretary, as the case may be, to the appropriate State officer as designated in accordance with section 316(a) of the Federal Election Campaign Act of 1971 (2 U.S.C. 439(a)) of the State represented by the Member or in which the individual is a candidate, as the case may be, within the seven-day period beginning the day that the report is filed with the Clerk or Secretary.

(d)(1) A copy of each report filed under this title with the Clerk shall be sent by the Clerk to the designated committee of the House of Representatives within the seven-day period beginning the day that the report is filed.

(2) A copy of each report filed with the Secretary shall be sent by the Secretary to the designated committee of the Senate.

(e) In carrying out their responsibilities under this title, the Clerk and the Secretary shall avail themselves of the assistance of the Federal Election Commission. The Commission shall make available to the Clerk and the Secretary on a regular basis a complete list of names and addresses of all candidates registered with the Commission, and shall cooperate and coordinate its candidate information and notification program with the Clerk and the Secretary to the greatest extent possible.

(f) In order to carry out their responsibilities under this title, the designated committee of the House of Representatives, and the designated committee of the Senate, shall develop reporting forms and may promulgate rules and regulations.

ACCESSIBILITY OF REPORTS

SEC. 104. (a) Except as provided in the second sentence of this subsection, within fifteen calendar days after a report is filed with the Clerk under this title, the Clerk shall make such report available for public inspection at reasonable hours. With respect to reports required to be filed by May 15 of any year, such reports shall be made available for public inspection within fifteen calendar days after May 15 of such year. A copy of any such report shall be provided by the Clerk to any person upon request.

(b) Except as provided in the second sentence of this subsection, within fifteen days after a report is filed with the Secretary under this title, the Secretary shall make such report available for public inspection at reasonable hours. With respect to reports required to be filed by May 15 of any year, such reports shall be made available for public inspection within fifteen calendar days after May 15 of such year. A copy of any such report shall be provided by the Secretary to any person upon request.

(c)(1) Notwithstanding subsections (a) and (b), a report may not be made available under this section to any person nor may any copy thereof be provided under this section to any person except upon a written application by such person stating—

(A) that person's name, occupation, and address;

(B) the name and address of any other person or organization on whose behalf the inspection or copy is requested; and

(C) that such person is aware of the prohibitions on the obtaining or use of the report.

Any such application shall be made available to the public throughout the period during which the report is made available to the public.

(2) Any person requesting a copy of a report may be required to pay a reasonable fee to cover the cost of reproduction or mailing of such report, excluding any salary of any employee involved in such reproduction or mailing. A copy of such report may be furnished without charge or at a reduced charge if it is determined by the Clerk or Secretary that waiver or reduction of the fee is in the public interest because furnishing the information may be considered as primarily benefiting the public.

(d) Any report filed under this title with the Clerk or Secretary shall be available to the public for a period of six years after receipt of the report. After such six-year period the report shall be destroyed unless needed in an ongoing investigation, except that in the case of an individual who filed the report pursuant to section 101(d) and was not subsequently elected, such reports shall be destroyed one year after the individual is no longer a candidate for election to the office of Member unless needed in an ongoing investigation.

(e)(1) It shall be unlawful for any person to obtain or use a report—

(A) for any unlawful purpose;

(B) for any commercial purpose other than by news and communications media for dissemination to the general public;

(C) for determining or establishing the credit rating of any individual; or

(D) for use, directly or indirectly, in the solicitation of money for any political, charitable, or other purpose.

(2) The Attorney General may bring a civil action against any person who obtains or uses a report for any purpose prohibited in paragraph (1). The court in which such action is brought may assess against such person a penalty in any amount not to exceed $5,000. Such remedy shall be in addition to any other remedy available under statutory or common law.

REVIEW AND COMPLIANCE PROCEDURES

SEC. 105. (a) The designated committee of the House of Representatives and the designated committee of the Senate shall establish procedures for the review of reports sent to them under section 103(d)(1) and section 103(d)(2) to determine whether the reports are filed in a timely manner, are complete, and are in proper form. In the event a determination is made that a report is not so filed, the

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appropriate committee shall so inform the reporting individual and direct him to take all necessary corrective action.

(b) In order to carry out their responsibilities under this title the designated committee of the House of Representatives and the designated committee of the Senate, have power, within their respective jurisdictions, to render any advisory opinion interpreting this title, in writing, to persons covered by this title. Notwithstanding any other provisions of law, the individual to whom a public advisory opinion is rendered in accordance with this subsection, and any other individual covered by this title who is involved in a fact situation which is indistinguishable in all material aspects, and who, after the issuance of the advisory opinion, acts in good faith in accordance with the provisions and findings of such advisory opinion shall not, as a result of such act, be subject to any sanction provided in this title.

FAILURE TO FILE OR FALSIFYING REPORTS

SEC. 106. The Attorney General may bring a civil action in any appropriate United States district court against any individual who knowingly and willfully falsifies or who knowingly and willfully fails to file or report any information that such individual is required to report pursuant to section 102. The court in which such action is brought may assess against such individual a civil penalty in any amount not to exceed $5,000. No action may be brought under this section against any individual with respect to a report filed by such individual in calendar year 1978 pursuant to section 101(d).

DEFINITIONS

SEC. 107. For the purposes of this title, the term—

(1) "income" means all income from whatever source derived, including but not limited to the following items: compensation for services, including fees, commissions, and similar items; gross income derived from business (and net income if the individual elects to include it); gains derived from dealings in property; interest; rents; royalties; dividends; annuities; income from life insurance and endowment contracts; pensions; income from discharge of indebtedness; distributive share of partnership income; and income from an interest in an estate or trust;

(2) "relative" means an individual who is related to the reporting individual, as father, mother, son, daughter, brother, sister, uncle, aunt, great aunt, great uncle, first cousin, nephew, niece, husband, wife, grandfather, grandmother, grandson, granddaughter, father-in-law, mother-in-law, son-in-law, daughter-in-law, brother-in-law, sister-in-law, stepfather, stepmother, stepson, stepdaughter, stepbrother, stepsister, half brother, half sister, or who is the grandfather or grandmother of the spouse of the reporting individual, and shall be deemed to include the fiance or fiancee of the reporting individual;

(3) "gift" means a payment, advance, forbearance, rendering, or deposit of money, or any thing of value, unless consideration

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of equal or greater value is received by the donor, but does not include—

(A) bequest and other forms of inheritance;

(B) suitable mementos of a function honoring the reporting individual;

(C) food, lodging, transportation, and entertainment provided by State and local governments, or political subdivisions thereof, by a foreign government within a foreign country, or by the United States Government;

(D) food and beverages consumed at banquets, receptions, or similar events;

(E) consumable products provided by home-State businesses to a Member's office for distribution; or

(F) communications to the offices of a reporting individual including subscriptions to newspapers and periodicals;

(4) "honoraria" has the meaning given such term in the Federal Election Campaign Act of 1971;

(5) "value" means a good faith estimate of the dollar value if the exact value is neither known nor easily obtainable by the reporting individual;

(6) "personal hospitality of any individual" means hospitality extended for a nonbusiness purpose by an individual, not a corporation or organization, at the personal residence of that individual or his family or on property or facilities owned by that individual or his family;

(7) "dependent child" means, when used with respect to any reporting individual, any individual who is a son, daughter, stepson, or stepdaughter and who—

(A) is unmarried and under age 21 and is living in the household of such reporting individual; or

(B) is a dependent of such reporting individual within the meaning of section 152 of the Internal Revenue Code of 1954;

(8) "reimbursement" means any payment or other thing of value received by the reporting individual, other than gifts, to cover travel-related expenses of such individual other than those which are—

(A) provided by the United States Government, the District of Columbia, or any State or political subdivision thereof;

(B) required to be reported by the reporting individual under section 7342 of title 5, United States Code; or

(C) required to be reported under section 304 of the Federal Election Campaign Act of 1971 (2 U.S.C. 434);

(9) "candidate" means an individual, other than a Member, who seeks nomination for election, or election, to the Congress whether or not such individual is elected, and for purposes of this paragraph, an individual shall be deemed to seek nomination for election, or election, (A) if he has taken the action necessary under the law of a State to qualify himself for nomination for election, or election, or (B) if he or his principal campaign committee has taken action to register or file campaign reports required by section 304(a) of the Federal Election Campaign Act of 1971 (2 U.S.C. 434(a));

(10) "Clerk" means the Clerk of the House of Representatives;

(11) "Secretary" means the Secretary of the Senate;

(12) "Member" means a United States Senator, a Representative in Congress, a Delegate to Congress, or the Resident Commissioner from Puerto Rico;

(13) "election" means (A) a general, special, primary, or runoff election, or (B) a convention or caucus of a political party which has authority to nominate a candidate;

(14) "officer or employee of the House" means any individual, other than a Member, whose compensation is disbursed by the Clerk;

(15) "officer or employee of the Senate" means an individual, other than a Senator or the Vice President, whose compensation is disbursed by the Secretary; and

(16) "designated committee of the House of Representatives" and "designated committee of the Senate" means the committee of the House or Senate, as the case may be, assigned responsibility for administering the reporting requirements of this title.

OTHER LAWS

SEC. 108. The provisions added by this title, and the regulations issued thereunder, shall supersede and preempt any State or local law with respect to financial disclosure by reason of holding the office of Member or candidacy for Federal office or employment by the United States Government.

GENERAL ACCOUNTING OFFICE STUDY

SEC. 109. (a) Before November 30, 1980, and regularly thereafter, the Comptroller General of the United States shall conduct a study to determine whether this title is being carried out effectively and whether timely and accurate reports are being filed by individuals subject to this title.

(b) Within thirty days after completion of the study, the Comptroller General shall transmit a report to each House of Congress containing a detailed statement of his findings and conclusions, together with his recommendations for such legislative and administrative actions as he deems appropriate. The first such study shall include the Comptroller General's findings and recommendations on the feasibility and potential need for a requirement that systematic random audits be conducted of financial disclosure reports filed under this title, including a thorough discussion of the type and nature of audits that might be conducted; the personnel and other costs of audits; the value of an audit to Members, the appropriate House and Senate committees, and the public; and, if conducted whether a governmental or nongovernmental unit should perform the audits, and under whose supervision.

13. 5 U.S.C. sec. 557(d)

§ 557. Initial decisions; conclusiveness; review by agency; submissions by parties; contents of decisions; record

(a) This section applies, according to the provisions thereof, when a hearing is required to be conducted in accordance with section 556 of this title.

* * * * * * *

(d)(1) In any agency proceeding which is subject to subsection (a) of this section, except to the extent required for the disposition of ex parte matters as authorized by law—

(A) no interested person outside the agency shall make or knowingly cause to be made to any member of the body comprising the agency, administrative law judge, or other employee who is or may reasonably be expected to be involved in the decisional process of the proceeding, an ex parte communication relevant to the merit of the proceeding;

(B) no member of the body comprising the agency, administrative law judge, or other employee who is or may reasonably be expected to be involved in the decisional process of the proceeding, shall make or knowingly cause to be made to any interested person outside the agency an ex parte communication relevant to the merits of the proceeding;

(C) a member of the body comprising the agency, administrative law judge, or other employee who is or may reasonably be expected to be involved in the decisional process of such proceeding who receives, or who makes or knowingly causes to be made, a communication prohibited by this subsection shall place on the public record of the proceeding:

(i) all such written communications;

(ii) memoranda stating the substance of all such oral communications; and

(iii) all written responses, and memoranda stating the substance of all oral responses, to the materials described in clauses (i) and (ii) of this subparagraph;

(D) upon receipt of a communication knowingly made or knowingly caused to be made by a party in violation of this subsection, the agency, administrative law judge, or other employee presiding at the hearing may, to the extent consistent with the interests of justice and the policy of the underlying statutes, require the party to show cause why his claim or interest in the proceeding should not be dismissed, denied, disregarded, or otherwise adversely affected on account of such violation; and

(E) the prohibitions of this subsection shall apply beginning at such time as the agency may designate, but in no case shall they begin to apply later than the time at which a proceeding is noticed for hearing unless the person responsible for the communication has knowledge that it will be noticed, in which case the prohibitions shall apply beginning at the time of his acquisition of such knowledge.

(2) This subsection does not constitute authority to withhold information from Congress.

(Pub. L. 89-554, Sept. 6, 1966, 80 Stat. 387; Pub. L. 94-409, § 4(a), Sept. 13, 1976, 90 Stat. 1246.)

14. 5 U.S.C. sec. 3110

§ 3110. Employment of relatives; restrictions

(a) For the purpose of this section—

(1) "agency" means—

(A) an Executive agency;

(B) an office, agency, or other establishment in the legislative branch;

(C) an office, agency, or other establishment in the judicial branch; and

(D) the government of the District of Columbia;

(2) "public official" means an officer (including the President and a Member of Congress), a member of the uniformed service, an employee and any other individual, in whom is vested the authority by law, rule, or regulation, or to whom the authority has been delegated, to appoint, employ, promote, or advance individuals, or to recommend individuals for appointment, employment, promotion, or advancement, in connection with employment in an agency; and

(3) "relative" means, with respect to a public official, an individual who is related to the public official as father, mother, son, daughter, brother, sister, uncle, aunt, first cousin, nephew, niece, husband, wife, father-in-law, mother-in-law, son-in-law, daughter-in-law, brother-in-law, sister-in-law, stepfather, stepmother, stepson, stepdaughter, stepbrother, stepsister, half brother, or half sister.

(b) A public official may not appoint, employ, promote, advance, or advocate for appointment, employment, promotion, or advancement, in or to a civilian position in the agency in which he is serving or over which he exercises jurisdiction or control any individual who is a relative of the public official. An individual may not be appointed, employed, promoted, or advanced in or to a civilian position in an agency if such appointment, employment, promotion, or advancement has been advocated by a public official, serving in or exercising jurisdiction or control over the agency, who is a relative of the individual.

(c) An individual appointed, employed, promoted, or advanced in violation of this section is not entitled to pay, and money may not be paid from the Treasury as pay to an individual so appointed, employed, promoted, or advanced.

(d) The Office of Personnel Management may prescribe regulations authorizing the temporary employment, in the event of emergencies resulting from natural disasters or similar unforeseen events or circumstances, of individuals whose employment would otherwise be prohibited by this section.

(e) This section shall not be construed to prohibit the appointment of an individual who is a preference eligible in any case in which the passing over of that individual on a certificate of eligibles furnished under section 3317(a) of this title will result in the selection for appointment of an individual who is not a preference eligible.

(Added Pub. L. 90-206, Title II, § 221(a), Dec. 16, 1967, 81 Stat. 640.)

15. 5 U.S.C. sec. 3303

§ 3303. Competitive service; recommendations of Senators or Representatives

An individual concerned in examining an applicant for or appointing him in the competitive service may not receive or consider a recommendation of the applicant by a Senator or Representative, except as to the character or residence of the applicant.

(Pub. L. 89-554, Sept. 6, 1966, 80 Stat. 418.)

16. 5 U.S.C. sec. 5533

§ 5533. Dual pay from more than one position; limitations; exceptions

(a) Except as provided by subsections (b), (c), and (d) of this section, an individual is not entitled to receive basic pay from more than one position for more than an aggregate of 40 hours of work in one calendar week (Sunday through Saturday).

(b) Except as otherwise provided by subsection (c) of this section, the Office of Personnel Management, subject to the supervision and control of the President, may prescribe regulations under which exceptions may be made to the restrictions in subsection (a) of this section when appropriate authority determines that the exceptions are warranted because personal services otherwise cannot be readily obtained.

(c)(1) Unless otherwise authorized by law and except as otherwise provided by paragraph (2) or (4) of this subsection, appropriated funds are not available for payment to an individual of pay from more than one position if the pay of one of the positions is paid by the Secretary of the Senate or the Clerk of the House of Representatives, or one of the positions is under the Office of the Architect of the Capitol, and if the aggregate gross pay from the positions exceeds $7,724 a year ($10,540, in the case of pay disbursed by the Secretary of the Senate).

(2) Notwithstanding paragraph (1) of this subsection, appropriated funds are not available for payment to an individual of pay from more than one position, for each of which the pay is disbursed by the Clerk of the House of Representatives, if the aggregate gross pay from those positions exceeds the maximum per annum gross rate of pay authorized to be paid to an employee out of the clerk hire allowance of a Member of the House.

(3) For the purposes of this subsection, "gross pay" means the annual rate of pay (or equivalent thereof in the case of an individual paid on other than an annual basis) received by an individual.

(4) Paragraph (1) of this subsection does not apply to pay on a when-actually-employed basis received from more than one consultant or expert position if the pay is not received for the same day.

(d) Subsection (a) of this section does not apply to—

(1) pay on a when-actually-employed basis received from more than one consultant or expert position if the pay is not received for the same hours of the same day;

(2) pay consisting of fees paid on other than a time basis;

(3) pay received by a teacher of the public schools of the District of Columbia for employment in a position during the summer vacation period;

(4) pay paid by the Tennessee Valley Authority to an employee performing part-time or intermitent work in addition to his normal duties when the Authority considers it to be in the interest of efficiency and economy;

(5) pay received by an individual holding a position—

(A) the pay of which is paid by the Secretary of the Senate or the Clerk of the House of Representatives; or

(B) under the Architect of the Capitol;

(6) pay paid by the United States Coast Guard to an employee occupying a part-time position of lamplighter; and

(7) pay within the purview of any of the following statutes:

(A) section 162 of title 2;

(B) section 23(b) of title 13;

(C) section 327 of title 15;

(D) section 907 of title 20;

(E) section 873 of title 33;

(F) section 631 or 631(a) of title 31, District of Columbia Code; or

(e)(1) This section does not apply to an individual employed under sections 174j–1 to 174j–7 or 174k of title 40.

(2) Subsection (c) of this section does not apply to pay received by a teacher of the public schools of the District of Columbia for employment in a position during the summer vacation period.

17. 5 U.S.C. sec. 7342

"§ 7342. Receipt and disposition of foreign gifts and decorations

"(a) For the purpose of this section—

"(1) 'employee' means—

"(A) an employee as defined by section 2105 of this title and an officer or employee of the United States Postal Service or of the Postal Rate Commission;

"(B) an expert or consultant who is under contract under section 3109 of this title with the United States or any agency, department, or establishment thereof, including, in the case of an organization performing services under such section, any individual involved in the performance of such services;

"(C) an individual employed by, or occupying an office or position in, the government of a territory or possession of the United States or the government of the District of Columbia;

"(D) a member of a uniformed service;

"(E) the President and the Vice President;

"(F) a Member of Congress as defined by section 2106 of this title (except the Vice President) and any Delegate to the Congress; and

"(G) the spouse of an individual described in subparagraphs (A) through (F) (unless such individual and his or her spouse are separated) or a dependent (within the meaning of section 152 of the Internal Revenue Code of

1954) of such an individual, other than a spouse or dependent who is an employee under subparagraphs (A) through (F);

"(2) 'foreign government' means—

"(A) any unit of foreign governmental authority, including any foreign national, State, local, and municipal government;

"(B) any international or multinational organization whose membership is composed of any unit of foreign government described in subparagraph (A); and

"(C) any agent or representative of any such unit or such organization, while acting as such;

"(3) 'gift' means a tangible or intangible present (other than a decoration) tendered by, or received from, a foreign government;

"(4) 'decoration' means an order, device, medal, badge, insignia, emblem, or award tendered by, or received from, a foreign government;

"(5) 'minimal value' means a retail value in the United States at the time of acceptance of $100* or less, except that—

"(A) on January 1, 1981, and at 3 year intervals thereafter, 'minimal value' shall be redefined in regulations prescribed by the Administrator of General Services, in consultation with the Secretary of State, to reflect changes in the consumer price index for the immediately preceding 8-year period; and

"(B) regulations of an employing agency may define 'minimal value' for its employees to be less than the value established under this paragraph; and

"(6) 'employing agency' means—

"(A) the Committee on Standards of Official Conduct of the House of Representatives, for Members and employees of the House of Representatives, except that those responsibilities specified in subsections (c)(2)(A), (e)(1), and (g)(2)(B) shall be carried out by the Clerk of the House;

"(B) the Select Committee on Ethics of the Senate, for Senators and employees of the Senate; except that those responsibilities (other than responsibilities involving approval of the employing agency) specified in subsections (c)(2), (d) and (g)(2)(B) shall be carried out by the Secretary of the Senate;

"(C) the Administrative Office of the United States Courts, for judges and judicial branch employees; and

"(D) the department, agency, office, or other entity in which an employee is employed, for other legislative branch employees and for all executive branch employees.

"(b) An employee may not—

"(1) request or otherwise encourage the tender of a gift or decoration; or

"(2) accept a gift or decoration, other than in accordance with the provisions of subsections (c) and (d).

"(c)(1) The Congress consents to—

*Now $140.

"(A) the accepting and retaining by an employee of a gift of minimal value tendered and received as a souvenir or mark of courtesy; and

"(B) the accepting by an employee of a gift of more than minimal value when such gift is in the nature of an educational scholarship or medical treatment or when it appears that to refuse the gift would likely cause offense or embarrassment or otherwise adversely affect the foreign relations of the United States, except that—

"(i) a tangible gift of more than minimal value is deemed to have been accepted on behalf of the United States and, upon acceptance, shall become the property of the United States; and

"(ii) an employee may accept gifts of travel or expenses for travel taking place entirely outside the United States (such as transportation, food, and lodging) of more than minimal value if such acceptance is appropriate, consistent with the interests of the United States, and permitted by the employing agency and any regulations which may be prescribed by the employing agency.

"(2) Within 60 days after accepting a tangible gift of more than minimal value (other than a gift described in paragraph (1)(B)(ii)), an employee shall—

"(A) deposit the gift for disposal with his or her employing agency; or

"(B) subject to the approval of the employing agency deposit the gift with that agency for official use.

Within 30 days after terminating the official use of a gift under subparagraph (B), the employing agency shall forward the gift to the Administrator of General Services in accordance with subsection (e)(1) or provide for its disposal in accordance with subsection (e)(2).

"(3) When an employee deposits a gift of more than minimal value for disposal or for official use pursuant to paragraph (2), or within 30 days after accepting travel or travel expenses as provided in paragraph (1)(B)(ii) unless such travel or travel expenses are accepted in accordance with specific instructions of his or her employing agency, the employee shall file a statement with his or her employing agency or its delegate containing the information prescribed in subsection (f) for that gift.

"(d) The Congress consents to the accepting, retaining, and wearing by an employee of a decoration tendered in recognition of active field service in time of combat operations or awarded for other outstanding or unusually meritorious performance, subject to the approval of the employing agency of such employee. Without this approval, the decoration is deemed to have been accepted on behalf of the United States, shall become the property of the United States, and shall be deposited by the employee, within sixty days of acceptance, with the employing agency for official use, for forwarding to the Administrator of General Services for disposal in accordance with subsection (e)(1), or for disposal in accordance with subsection (e)(2).

"(e)(1) Except as provided in paragraph (2), gifts and decorations that have been deposited with an employing agency for disposal

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shall be (A) returned to the donor, or (B) forwarded to the Administrator of General Services for transfer, donation, or other disposal in accordance with the provisions of the Federal Property and Administrative Services Act of 1949. However, no gift or decoration that has been deposited for disposal may be sold without the approval of the Secretary of State, upon a determination that the sale will not adversely affect the foreign relations of the United States. Gifts and decorations may be sold by negotiated sale.

"(2) Gifts and decorations received by a Senator or an employee of the Senate that are deposited with the Secretary of the Senate for disposal, or are deposited for an official use which has terminated, shall be disposed of by the Commission on Arts and Antiquities of the United States Senate. Any such gift or decoration may be returned by the Commission to the donor or may be transferred or donated by the Commission, subject to such terms and conditions as it may prescribe, (A) to an agency or instrumentality of (i) the United States, (ii) a State, territory, or possession of the United States, or a political subdivision of the foregoing, or (iii) the District of Columbia, or (B) to an organization described in section 501(c)(3) of the Internal Revenue Code of 1954 which is exempt from taxation under section 501(a) of such Code. Any such gift or decoration not disposed of as provided in the preceding sentence shall be forwarded to the Administrator of General Services for disposal in accordance with paragraph (1). If the Administrator does not dispose of such gift or decoration within one year, he shall, at the request of the Commission, return it to the Commission and the Commission may dispose of such gift or decoration in such manner as it considers proper, except that such gift or decoration may be sold only with the approval of the Secretary of State upon a determination that the sale will not adversely affect the foreign relations of the United States.

"(f)(1) Not later than January 31 of each year, each employing agency or its delegate shall compile a listing of all statements filed during the preceding year by the employees of that agency pursuant to subsection (c)(3) and shall transmit such listing to the Secretary of State who shall publish a comprehensive listing of all such statements in the Federal Register.

"(2) Such listings shall include for each tangible gift reported—

"(A) the name and position of the employee;

"(B) a brief description of the gift and the circumstances justifying acceptance;

"(C) the identity, if known, of the foreign government and the name and position of the individual who presented the gift;

"(D) the date of acceptance of the gift;

"(E) the estimated value in the United States of the gift at the time of acceptance; and

"(F) disposition or current location of the gift.

"(3) Such listings shall include for each gift of travel or travel expenses—

"(A) the name and position of the employee;

"(B) a brief description of the gift and the circumstances justifying acceptance; and

"(C) the identity, if known, of the foreign government and the name and position of the individual who presented the gift.

"(4) In transmitting such listings for the Central Intelligence Agency, the Director of Central Intelligence may delete the information described in subparagraphs (A) and (C) of paragraphs (2) and (3) if the Director certifies in writing to the Secretary of State that the publication of such information could adversely affect United States intelligence sources.

"(g)(1) Each employing agency shall prescribe such regulations as may be necessary to carry out the purpose of this section. For all employing agencies in the executive branch, such regulations shall be prescribed pursuant to guidance provided by the Secretary of State. These regulations shall be implemented by each employing agency for its employees.

"(2) Each employing agency shall—

"(A) report to the Attorney General cases in which there is reason to believe that an employee has violated this section;

"(B) establish a procedure for obtaining an appraisal, when necessary, of the value of gifts; and

"(C) take any other actions necessary to carry out the purpose of this section.

"(h) The Attorney General may bring a civil action in any district court of the United States against any employee who knowingly solicits or accepts a gift from a foreign government not consented to by this section or who fails to deposit or report such gift as required by this section. The court in which such action is brought may assess a penalty against such employee in any amount not to exceed the retail value of the gift improperly solicited or received plus $5,000.

"(i) The President shall direct all Chiefs of the United States Diplomatic Mission to inform their host governments that it is a general policy of the United States Government to prohibit United States Government employees from receiving gifts or decorations of more than minimal value.

"(j) Nothing in this section shall be construed to derogate any regulation prescribed by any employing agency which provides for more stringent limitations on the receipt of gifts and decorations by its employees.

"(k) The provisions of this section do not apply to grants and other forms of assistance to which section 108A of the Mutual Educational and Cultural Exchange Act of 1961 applies.".

(2) The amendment made by paragraph (1) of this subsection shall take effect on January 1, 1978.

(b)(1) After September 30, 1977, no appropriated funds, other than funds from the "Emergencies in the Diplomatic and Consular Service" account of the Department of State, may be used to purchase any tangible gift of more than minimal value (as defined in section 7342(a)(5) of title 5, United States Code) for any foreign individual unless such gift has been approved by the Congress.

(2) Beginning October 1, 1977, the Secretary of State shall annually transmit to the Speaker of the House of Representatives and the chairman of the Committee on Foreign Relations of the Senate a report containing details on (1) any gifts of more than minimal value purchased with appropriated funds which were given to a foreign individual during the previous fiscal year, and (2) any other gifts of more than minimal value given by the United States Gov-

ernment to a foreign individual which were not obtained using appropriated funds.

(Approved Aug. 17, 1977 amended Pub. L. 95-426, Oct. 7, 1978.)

18. 18 U.S.C. sec. 201

§ 201. Bribery of public officials and witnesses

(a) For the purpose of this section—

"public official" means Member of Congress, or Resident Commissioner, either before or after he has qualified, or an officer or employee or person acting for or on behalf of the United States, or any department, agency or branch of Government thereof, including the District of Columbia, in any official function, under or by authority of any such department, agency, or branch of Government, or a juror; and

"person who has been selected to be a public official" means any person who has been nominated or appointed to be a public official, or has been officially informed that he will be so nominated or appointed; and

"official act" means any decision or action on any question, matter, cause, suit, proceeding or controversy, which may at any time be pending, or which may by law be brought before any public official, in his official capacity, or in his place of trust or profit.

(b) Whoever, directly or indirectly, corruptly gives, offers or promises anything of value to any public official or person who has been selected to be a public official, or offers or promises any public official or any person who has been selected to be a public official to give anything of value to any other person or entity, with intent—

(1) to influence any official act; or

(2) to influence such public official or person who has been selected to be a public official to commit or aid in committing, or collude in, or allow, any fraud, or make opportunity for the commission of any fraud, on the United States; or

(3) to induce such public official or such person who has been selected to be a public official to do or omit to do any act in violation of his lawful duty, or

(c) Whoever, being a public official or person selected to be a public official, directly or indirectly, corruptly asks, demands, exacts, solicits, seeks, accepts, receives, or agrees to receive anything of value for himself or for any other person or entity, in return for:

(1) being influenced in his performance of any official act; or

(2) being influenced to commit or aid in committing, or to collude in, or allow, any fraud, or make opportunity for the commission of any fraud, on the United States; or

(3) being induced to do or omit to do any act in violation of his official duty; or

(d) Whoever, directly or indirectly, corruptly gives, offers, or promises anything of value to any person, or offers or promises such person to give anything of value to any other person or entity, with intent to influence the testimony under oath or affirmation of such first-mentioned person as a witness upon a trial, hearing, or

other proceeding, before any court, any committee of either House or both Houses of Congress, or any agency, commission, or officer authorized by the laws of the United States to hear evidence or take testimony, or with intent to influence such person to absent himself therefrom; or

(e) Whoever, directly or indirectly, corruptly asks, demands, exacts, solicits, seeks, accepts, receives, or agrees to receive anything of value for himself or for any other person or entity in return for being influenced in his testimony under oath or affirmation as a witness upon any such trial, hearing, or other proceeding, or in return for absenting himself therefrom—

Shall be fined not more than $20,000 or three times the monetary equivalent of the thing of value, whichever is greater, or imprisoned for not more than fifteen years, or both, and may be disqualified from holding any office of honor, trust, or profit under the United States.

(f) Whoever, otherwise than as provided by law for the proper discharge of official duty, directly or indirectly gives, offers, or promises anything of value to any public official, former public official, or person selected to be a public official, for or because of any official act performed or to be performed by such public official, former public official, or person selected to be a public official; or

(g) Whoever, being a public official, former public official, or person selected to be a public official, otherwise than as provided by law for the proper discharge of official duty, directly or indirectly asks, demands, exacts, solicits, seeks, accepts, receives, or agrees to receive anything of value for himself for or because of any official act performed or to be performed by him; or

(h) Whoever, directly or indirectly, gives, offers, or promises anything of value to any person, for or because of the testimony under oath or affirmation given or to be given by such person as a witness upon a trial, hearing, or other proceeding, before any court, any committee of either House or both Houses of Congress, or any agency, commission, or officer authorized by the laws of the United States to hear evidence or take testimony, or for or because of his absence therefrom; or

(i) Whoever, directly or indirectly, asks, demands, exacts, solicits, seeks, accepts, receives, or agrees to receive anything of value for himself for or because of the testimony under oath or affirmation given or to be given by him as a witness upon any such trial, hearing, or other proceeding, or for or because of his absence therefrom—

Shall be fined not more than $10,000 or imprisoned for not more than two years, or both.

(j) Subsections (d), (e), (h), and (i) shall not be construed to prohibit the payment or receipt of witness fees provided by law, or the payment, by the party upon whose behalf a witness is called and receipt by a witness, of the reasonable cost of travel and subsistence incurred and the reasonable value of time lost in attendance at any such trial, hearing, or proceeding, or in the case of expert witnesses, involving a technical or professional opinion, a reasonable fee for time spent in the preparation of such opinion, and in appearing and testifying.

(k) The offenses and penalties prescribed in this section are separate from and in addition to those prescribed in sections 1503, 1504, and 1505 of this title.

(Added Pub. L. 87-849, § 1(a), Oct. 23, 1962, 76 Stat. 1121, and amended Pub. L. 90-578, Title III, § 301(b), Oct. 17, 1968, 82 Stat. 1115.)

19. 18 U.S.C. sec. 203

§ 203. Compensation to Members of Congress, officers, and others in matters affecting the Government

(a) Whoever, otherwise than as provided by law for the proper discharge of official duties, directly or indirectly receives or agrees to receive, or asks, demands, solicits, or seeks, any compensation for any services rendered or to be rendered either by himself or another—

(1) At a time when he is a Member of Congress, Member of Congress Elect, Resident Commissioner, or Resident Commissioner Elect; or

(2) At a time when he is an officer or employee of the United States in the executive, legislative, or judicial branch of the Government, or in any agency of the United States, including the District of Columbia,

in relation to any proceeding, application, request for a ruling or other determination, contract, claim, controversy, charge, accusation, arrest, or other particular matter in which the United States is a party or has a direct and substantial interest, before any department, agency, court-martial, officer, or any civil, military, or naval commission, or

(b) Whoever, knowingly, otherwise than as provided by law for the proper discharge of official duties, directly or indirectly gives, promises or offers any compensation for any such services rendered or to be rendered at a time when the person to whom the compensation is given, promised, or offered, is or was such a Member, Commissioner, officer or employee—

Shall be fined not more than $10,000 or imprisoned for not more than two years, or both; and shall be incapable of holding any office of honor, trust, or profit under the United States.

(c) A special Government employee shall be subject to subsection (a) only in relation to a particular matter involving a specific party or parties (1) in which he has at any time participated personally and substantially as a Government employee or as a special Government employee through decision, approval, disapproval, recommendation, the rendering of advice, investigation or otherwise, or (2) which is pending in the department or agency of the Government in which he is serving: *Provided,* That clause (2) shall not apply in the case of a special Government employee who has served in such department or agency no more than sixty days during the immediately preceding period of three hundred and sixty-five consecutive days.

20. 18 U.S.C. sec. 204

§ 204. Practice in United States Claims Court or the United States Court of Appeals for the Federal Circuit by Members of Congress

Whoever, being a Member of Congress, Member of Congress Elect, Delegate from the District of Columbia, Delegate Elect from the District of Columbia, Resident Commissioner, or Resident Commissioner Elect, practices in the United States Claims Court or the United States Court of Appeals for the Federal Circuit, shall be fined not more than $10,000 or imprisoned for not more than two years, or both and shall be incapable of holding any office of honor, trust, or profit under the United States.

(Added Pub. L. 87-849, § 1(a), Oct. 23, 1962, 76 Stat. 1122 and amended Pub. L. 91-405, title II, § 204(d)(2), Sept. 22, 1970, 84 Stat. 853; Pub. L. 97-164, title I, § 147, Apr. 2, 1982, 96 Stat. 45.)

21. 18 U.S.C. sec. 205

§ 205. Activities of officers and employees in claims against and other matters affecting the Government

Whoever, being an officer or employee of the United States in the executive, legislative, or judicial branch of the Government or in any agency of the United States, including the District of Columbia, otherwise than in the proper discharge of his official duties—

(1) acts as agent or attorney for prosecuting any claim against the United States, or receives any gratuity, or any share of or interest in any such claim in consideration of assistance in the prosecution of such claim, or

(2) acts as agent or attorney for anyone before any department, agency, court, court-martial, officer, or any civil, military, or naval commission in connection with any proceeding, application, request for a ruling or other determination, contract, claim, controversy, charge, accusation, arrest, or other particular matter in which the United States is a party or has a direct and substantial interest—

Shall be fined not more than $10,000 or imprisoned for not more than two years, or both.

A special Government employee shall be subject to the preceding paragraphs only in relation to a particular matter involving a specific party or parties (1) in which he has at any time participated personally and substantially as a Government employee or as a special Government employee through decision, approval, disapproval, recommendation, the rendering of advice, investigation or otherwise, or (2) which is pending in the department or agency of the Government in which he is serving: *Provided,* That clause (2) shall not apply in the case of a special Government employee who has served in such department or agency no more than sixty days during the immediately preceding period of three hundred and sixty-five consecutive days.

Nothing herein prevents an officer or employee, if not inconsistent with the faithful performance of his duties, from acting without compensation as agent or attorney for any person who is the subject of disciplinary, loyalty, or other personnel administration proceedings in connection with those proceedings.

Nothing herein or in section 203 prevents an officer or employee, including a special Government employee, from acting, with or without compensation, as agent or attorney for his parents, spouse, child, or any person for whom, or for any estate for which, he is serving as guardian, executor, administrator, trustee, or other personal fiduciary except in those matters in which he has participated personally and substantially as a Government employee, through decision, approval, disapproval, recommendation, the rendering of advice, investigation, or otherwise, or which are the subject of his official responsibility, provided that the Government official responsible for appointment to his position approves.

Nothing herein or in section 203 prevents a special Government employee from acting as agent or attorney for another person in the performance of work under a grant by, or a contract with or for the benefit of, the United States provided that the head of the department or agency concerned with the grant or contract shall certify in writing that the national interest so requires.

Such certification shall be published in the Federal Register.

Nothing herein prevents an officer or employee from giving testimony under oath or from making statements required to be made under penalty for perjury or contempt.

(Added Pub. L. 87-849, § 1(a), Oct. 23, 1962, 76 Stat. 1122.)

22. 18 U.S.C. sec. 211

§ 211. Acceptance or solicitation to obtain appointive public office

Whoever solicits or receives, either as a political contribution, or for personal emolument, any money or thing of value, in consideration of the promise of support or use of influence in obtaining for any person any appointive office or place under the United States, shall be fined not more than $1,000 or imprisoned not more than one year, or both.

Whoever solicits or receives any thing of value in consideration of aiding a person to obtain employment under the United States either by referring his name to an executive department or agency of the United States or by requiring the payment of a fee because such person has secured such employment shall be fined not more than $1,000, or imprisoned not more than one year, or both. This section shall not apply to such services rendered by an employment agency pursuant to the written request of an executive department or agency of the United States.

(June 25, 1948, c. 645, 62 Stat. 694, § 211, formerly § 215, amended Sept. 13, 1951, c. 380, 65 Stat. 320, and renumbered Oct. 23, 1962, Pub. L. 87-849, § 1(b), 76 Stat. 1125.)

23. 18 U.S.C. sec. 286

§ 286. Conspiracy to defraud the Government with respect to claims

Whoever enters into any agreement, combination, or conspiracy to defraud the United States, or any department or agency thereof, by obtaining or aiding to obtain the payment or allowance of any false, fictitious or fraudulent claim, shall be fined not more than $10,000 or imprisoned not more than ten years, or both.

(June 25, 1948, c. 645, 62 Stat. 698.)

24. 18 U.S.C. sec. 287

§ 287. False, fictitious or fraudulent claims

Whoever makes or presents to any person or officer in the civil, military, or naval service of the United States, or to any department or agency thereof, any claim upon or against the United States, or any department or agency thereof, knowing such claim to be false, fictitious, or fraudulent, shall be fined not more than $10,000 or imprisoned not more than five years, or both.

(June 25, 1948, c. 645, 62 Stat. 698.)

25. 18 U.S.C. secs. 431–433

§ 431. Contracts by Member of Congress

Whoever, being a Member of or Delegate to Congress, or a Resident Commissioner, either before or after he has qualified, directly or indirectly, himself, or by any other person in trust for him, or for his use or benefit, or on his account, undertakes, executes, holds, or enjoys, in part, any contract or agreement, made or entered into in behalf of the United States or any agency thereof, by any officer or person authorized to make contracts on its behalf, shall be fined not more than $3,000.

All contracts or agreements made in violation of this section shall be void; and whenever any sum of money is advanced by the United States or any agency thereof, in consideration of any such contract or agreement, it shall forthwith be repaid; and in case of failure or refusal to repay the same when remanded by the proper officer of the department or agency under whose authority such contract or agreement shall have been made or entered into, suit shall at once be brought against the person so failing or refusing and his sureties for the recovery of the money so advanced.

(June 25, 1948, c. 645, 62 Stat. 702; Oct. 31, 1951, c. 655, § 19, 65 Stat. 717.)

§ 432. Officer or employee contracting with Member of Congress

Whoever, being an officer or employee of the United States, on behalf of the United States or any agency thereof, directly or indirectly makes or enters into any contract, bargain, or agreement, with any Member of or Delegate to Congress, or any Resident Commissioner, either before or after he has qualified, shall be fined not more than $3,000.

(June 25, 1948, c. 645, 62 Stat. 702.)

§ 433. Exemptions with respect to certain contracts

Sections 431 and 432 of this title shall not extend to any contract or agreement made or entered into, or accepted by any incorporated company for the general benefit of such corporation; nor to the purchase or sale of bills of exchange or other property where the same are ready for delivery and payment therefor is made at the time of making or entering into the contract or agreement. Nor shall the provisions of such sections apply to advances, loans, discounts, purchase or repurchase agreements, extensions, or renewals thereof, or acceptances, releases or substitutions of security thereof or other contracts or agreements made or entered into under the Reconstruction Finance Corporation Act, the Agricultural Adjustment Act, the Federal Farm Loan Act, the Emergency

Farm Mortgage Act of 1933, the Farm Credit Act of 1933, or the Home Owners Loan Act of 1933, the Farmers' Home Administration Act of 1946, the Bankhead-Jones Farm Tenant Act, or to crop insurance agreements or contracts or agreements of a kind which the Secretary of Agriculture may enter into with farmers.

Any exemption permitted by this section shall be made a matter of public record.

(June 25, 1948, c. 645, 62 Stat. 703; Oct. 4, 1961, Pub. L. 87-353, § 3(*o*), 75 Stat. 774.)

26. 18 U.S.C. sec. 597

§ 597. Expenditures to influence voting

Whoever makes or offers to make an expenditure to any person, either to vote or withhold his vote, or to vote for or against any candidate; and

Whoever solicits, accepts, or receives any such expenditure in consideration of his vote or the withholding of his vote—

Shall be fined not more than $1,000 or imprisoned not more than one year; or both; and if the violation was willful, shall be fined not more than $10,000 or imprisoned not more than two years, or both.

(June 25, 1948, c. 645, 62 Stat. 721.)

27. 18 U.S.C. sec. 598

§ 598. Coercion by means of relief appropriations

Whoever uses any part of any appropriation made by Congress for work relief, relief, or for increasing employment by providing loans and grants for public-works projects, or exercises or administers any authority conferred by any Appropriation Act for the purpose of interfering with, restraining, or coercing any individual in the exercise of his right to vote at any election, shall be fined not more than $1,000 or imprisoned not more than one year, or both.

(June 25, 1948, c. 645, 62 Stat. 721.)

28. 18 U.S.C. sec. 599

§ 599. Promise of appointment by candidate

Whoever, being a candidate, directly or indirectly promises or pledges the appointment, or the use of his influence or support for the appointment of any person to any public or private position or employment, for the purpose of procuring support in his candidacy shall be fined not more than $1,000 or imprisoned not more than one year, or both; and if the violation was willful, shall be fined not more than $10,000 or imprisoned not more than two years, or both.

(June 25, 1948, c. 645, 62 Stat. 721.)

29. 18 U.S.C. sec. 600

§ 600. Promise of employment or other benefit for political activity

Whoever, directly or indirectly, promises any employment, position, compensation, contract, appointment, or other benefit, provided for or made possible in whole or in part by any Act of Congress, or any special consideration in obtaining any such benefit, to any person as consideration, favor, or reward for any political activity or for the support of or opposition to any candidate or any

political party in connection with any general or special election to any political office, or in connection with any primary election or political convention or caucus held to select candidates for any political office, shall be fined not more than $10,000 or imprisoned not more than one year, or both.

(As amended Oct. 2, 1976, Pub. L. 94-453, § 3, 90 Stat. 1517.)

1976 Amendment: Pub. L. 94-453 substituted $10,000 for $1,000 maximum allowable fine.

Legislative History: For legislative history and purpose of Pub. L. 94-453, see 1976 U.S. Code Cong. and Adm. News, p. 2883.

30. 18 U.S.C. sec. 601

§ 601. Deprivation of employment or other benefit for political contribution

(a) Whoever, directly or indirectly, knowingly causes or attempts to cause any person to make a contribution of a thing of value (including services) for the benefit of any candidate or any political party, by means of the denial or deprivation, or the threat of the denial or deprivation, of—

(1) any employment, position, or work in or for any agency or other entity of the Government of the United States, a State, or a political subdivision of a State, or any compensation or benefit of such employment, position, or work; or

(2) any payment or benefit of a program of the United States, a State, or a political subdivision of a State;

if such employment, position, work, compensation, payment, or benefit is provided for or made possible in whole or in part by an Act of Congress, shall be fined not more than $10,000, or imprisoned not more than one year, or both.

(b) As used in this section—

(1) the term "candidate" means an individual who seeks nomination for election, or election, to Federal, State, or local office, whether or not such individual is elected, and, for purposes of this paragraph, an individual shall be deemed to seek nomination for election, or election, to Federal, State, or local office, if he has (A) taken the action necessary under the law of a State to qualify himself for nomination for election, or election, or (B) received contributions or made expenditures, or has given his consent for any other person to receive contributions or make expenditures, with a view to bringing about his nomination for election, or election, to such office;

(2) the term "election" means (A) a general, special primary, or runoff election, (B) a convention or caucus of a political party held to nominate a candidate, (C) a primary election held for the selection of delegates to a nominating convention of a political party, (D) a primary election held for the expression of a preference for the nomination of persons for election to the office of President, and (E) the election of delegates to a constitutional convention for proposing amendments to the Constitution of the United States or of any State; and

(3) the term "State" means a State of the United States, the District of Columbia, the Commonwealth of Puerto Rico, or any territory or possession of the United States.

(As amended Oct. 2, 1976, Pub. L. 94-453, § 1, 90 Stat. 1516.)

1976 Amendment: Pub. L. 94-453 eliminated provisions relating to deprivations based upon race, creed, and color which are now set out in section 246 of this title, replaced term "political activity" with more precise terms and definitions, and raised the amount of maximum fine from $1,000 to $10,000.

Legislative History: For legislative history and purposes of Pub. L. 94-453, see 1976 U.S. Code Cong. and Adm. News, p. 2883.

31. 18 U.S.C. sec. 602

§ 602. Solicitation of political contributions.

It shall be unlawful for—

(1) a candidate for the Congress;

(2) an individual elected to or serving in the office of Senator or Representative in, or Delegate or Resident Commissioner to, the Congress;

(3) an officer or employee of the United States or any department or agency thereof; or

(4) a person receiving any salary or compensation for services from money derived from the Treasury of the United States to knowingly solicit any contribution within the meaning of section 301(8) of the Federal Election Campaign Act of 1971 from any other such officer, employee, or person. Any person who violates this section shall be fined not more than $5,000 or imprisoned not more than three years, or both.

(June 25, 1948, ch. 645, 62 Stat. 722; amended by P.L. 96-187, title II, § 201(a)(3), Jan. 8, 1980, 93 Stat. 1367.)

32. 18 U.S.C. sec. 603

§ 603. Making political contributions.

(a) It shall be unlawful for an officer or employee of the United States or any department or agency thereof, or a person receiving any salary or compensation for services from money derived from the Treasury of the United States, to make any contribution within the meaning of section 301(8) of the Federal Election Campaign Act of 1971 to any other such officer, employee or person or to any Senator or Representative in, or Delegate or Resident Commissioner to, the Congress, if the person receiving such contribution is the employer or employing authority of the person making the contribution. Any person who violates this section shall be fined not more than $5,000 or imprisoned not more than three years, or both.

(b) For purposes of this section, a contribution to an authorized committee as defined in section 302(e)(1) of the Federal Election Campaign Act of 1971 shall be considered a contribution to the individual who has authorized such committee.

(June 25, 1948, ch. 645, 62 Stat. 722; Oct. 31, 1951, ch. 655, § 20(b), 65 Stat. 718; amended by P.L. 96-187, title II, § 201(a)(4), Jan. 8, 1980, 93 Stat. 1367.)

33. 18 U.S.C. sec. 604

§ 604. Solicitation from persons on relief

Whoever solicits or receives or is in any manner concerned in soliciting or receiving any assessment, subscription, or contribution for any political purpose from any person known by him to be entitled to, or receiving compensation, employment, or other benefit

provided for or made possible by any Act of Congress appropriating funds for work relief or relief purposes, shall be fined not more than $1,000 or imprisoned not more than one year, or both.

(June 25, 1948, c. 645, 62 Stat. 722.)

34. 18 U.S.C. sec. 605

§ 605. Disclosure of names of persons on relief

Whoever, for political purposes, furnishes or discloses any list or names of persons receiving compensation, employment or benefits provided for or made possible by any Act of Congress appropriating, or authorizing the appropriation of funds for work relief or relief purposes, to a political candidate, committee, campaign manager, or to any person for delivery to a political candidate, committee, or campaign manager; and

Whoever receives any such list or names for political purposes—

Shall be fined not more than $1,000 or imprisoned not more than one year, or both.

(June 25, 1948, c. 645, 62 Stat. 722.)

35. 18 U.S.C. sec. 606

§ 606. Intimidation to secure political contributions

Whoever, being one of the officers or employees of the United States mentioned in section 602 of this title, discharges, or promotes, or degrades, or in any manner changes the official rank or compensation of any other officer or employee, or promises or threatens so to do, for giving or withholding or neglecting to make any contribution of money or other valuable thing for any political purpose, shall be fined not more than $5,000 or imprisoned not more than three years, or both.

(June 25, 1948, c. 645, 62 Stat. 722.)

36. 18 U.S.C. sec. 607

§ 607. Place of solicitation.

(a) It shall be unlawful for any person to solicit or receive any contribution within the meaning of section 301(8) of the Federal Election Campaign Act of 1971 in any room or building occupied in the discharge of official duties by any person mentioned in section 603, or in any navy yard, fort, or arsenal. Any person who violates this section shall be fined not more than $5,000 or imprisoned not more than three years, or both.

(b) The prohibition in subsection (a) shall not apply to the receipt of contributions by persons on the staff of a Senator or Representative in, or Delegate or Resident Commissioner to, the Congress, provided, that such contributions have not been solicited in any manner which directs the contributor to mail or deliver a contribution to any room, building, or other facility referred to in subsection (a), and provided that such contributions are transferred within seven days of receipt to a political committee within the meaning of section 302(e) of the Federal Election Campaign Act of 1971.

(June 25, 1948, ch. 645, 62 Stat. 722; amended by P.L. 96-187, title II, § 201(a)(5) Jan. 8, 1980, 93 Stat. 1367-68.)

37. 18 U.S.C. sec. 641

§ 641. Public money, property or records

Whoever embezzles, steals, purloins, or knowingly converts to his use or the use of another, or without authority, sells, conveys or disposes of any record, voucher, money, or thing of value of the United States or of any department or agency thereof, or any property made or being made under contract for the United States or any department or agency thereof; or

Whoever receives, conceals, or retains the same with intent to convert it to his use or gain, knowing it to have been embezzled, stolen, purloined or converted—

Shall be fined not more than $10,000 or imprisoned not more than ten years, or both; but if the value of such property does not exceed the sum of $100, he shall be fined not more than $1,000 or imprisoned not more than one year, or both.

The word "value" means face, par, or market value, or cost price, either wholesale or retail, whichever is greater.

(June 25, 1948, c. 645, 62 Stat. 725.)

38. 18 U.S.C. sec. 1001

§ 1001. Statements or entries generally

Whoever, in any matter within the jurisdiction of any department or agency of the United States knowingly and willfully falsifies, conceals or covers up by any trick, scheme, or device a material fact, or makes any false, fictitious or fraudulent statements or representations, or makes or uses any false writing or document knowing the same to contain any false, fictitious or fraudulent statement or entry, shall be fined not more than $10,000 or imprisoned not more than five years, or both.

(June 25, 1948, c. 645, 62 Stat. 749.)

39. 18 U.S.C. sec. 1719

§ 1719. Franking privilege

Whoever makes use of any official envelope, label, or indorsement authorized by law, to avoid the payment of postage or registry fee on his private letter, packet, package, or other matter in the mail, shall be fined not more than $300.

(June 25, 1948, c. 645, 62 Stat. 783.)

40. 26 U.S.C. secs. 4941 and 4946

§ 4941. Taxes on self-dealing

(a) INITIAL TAXES.—

(1) ON SELF-DEALER.—There is hereby imposed a tax on each act of self-dealing between a disqualified person and a private foundation. The rate of tax shall be equal to 5 percent of the amount involved with respect to the act of self-dealing for each year (or part thereof) in the taxable period. The tax imposed by this paragraph shall be paid by any disqualified person (other than a foundation manager acting only as such) who participates in the act of self-dealing. In the case of a government official (as defined in section 4946(c)), a tax shall be imposed by

this paragraph only if such disqualified person participates in the act of self-dealing knowing that it is such an act.

(2) ON FOUNDATION MANAGER.—In any case in which a tax is imposed by paragraph (1), there is hereby imposed on the partipation of any foundation manager in an act of self-dealing between a disqualified person and a private foundation, knowing that it is such an act, a tax equal to 2½ percent of the amount involved with respect to the act of self-dealing for each year (or part thereof) in the taxable period, unless such participation is not willful and is due to reasonable cause. The tax imposed by this paragraph shall be paid by any foundation manager who participated in the act of self-dealing.

(b) ADDITIONAL TAXES.—

(1) ON SELF-DEALER.—In any case in which an initial tax is imposed by subsection (a)(1) on an act of self-dealing by a disqualified person with a private foundation and the act is not corrected within the correction period, there is hereby imposed a tax equal to 200 percent of the amount involved. The tax imposed by this paragraph shall be paid by any disqualified person (other than a foundation manager acting only as such) who participated in the act of self-dealing.

(2) ON FOUNDATION MANAGER.—In any case in which an additional tax is imposed by paragraph (1), if a foundation manager refused to agree to part or all of the correction, there is hereby imposed a tax equal to 50 percent of the amount involved. The tax imposed by this paragraph shall be paid by any foundation manager who refused to agree to part or all of the correction.

(c) SPECIAL RULES.—For purposes of subsections (a) and (b)—

(1) JOINT AND SEVERAL LIABILITY.—If more than one person is liable under any paragraph of subsection (a) or (b) with respect to any one act of self-dealing, all such persons shall be jointly and severally liable under such paragraph with respect to such act.

(2) $10,000 LIMIT FOR MANAGEMENT.—With respect to any one act of self-dealing, the maximum amount of the tax imposed by subsection (a)(2) shall not exceed $10,000, and the maximum amount of the tax imposed by subsection (b)(2) shall not exceed $10,000.

(d) SELF-DEALING.—

(1) IN GENERAL.—For purposes of this section, the term "self-dealing" means any direct or indirect—

(A) sale or exchange, or leasing, of property between a private foundation and a disqualified person;

(B) lending of money or other extension of credit between a private foundation and a disqualified person;

(C) furnishing of goods, services, or facilities between a private foundation and a disqualified person;

(D) payment of compensation (or payment or reimbursement of expenses) by a private foundation to a disqualified person;

(E) transfer to, or use by or for the benefit of, a disqualified person of the income or assets of a private foundation; and

(F) agreement by a private foundation to make any payment of money or other property to a government official (as defined in section 4946(c)), other than an agreement to employ such individual for any period after the termination of his government service if such individual is terminating his government service within a 90-day period.

(2) SPECIAL RULES.—For purposes of paragraph (1)—

(A) the transfer of real or personal property by a disqualified person to a private foundation shall be treated as a sale or exchange if the property is subject to a mortage or similar lien which the foundation assumes or if it is subject to a mortgage or similar lien which a disqualified person placed on the property within the 10-year period ending on the date of the transfer;

(B) the lending of money by a disqualified person to a private foundation shall not be an act of self-dealing if the loan is without interest or other charge and if the proceeds of the loan are used exclusively for purposes specified in section 501(c)(3);

(C) the furnishing of goods, services, or facilities by a disqualified person to a private foundation shall not be an act of self-dealing if the furnishing is without charge and if the goods, services, or facilities so furnished are used exclusively for purposes specified in section 501(c)(3);

(D) the furnishing of goods, services, or facilities by a private foundation to a disqualified person shall not be an act of self-dealing if such furnishing is made on a basis no more favorable than that on which such goods, services, or facilities are made available to the general public;

(E) except in the case of a government official (as defined in section 4946(c)), the payment of compensation (and the payment or reimbursement of expenses) by a private foundation to a disqualified person for personal services which are reasonable and necessary to carrying out the exempt purpose of the private foundation shall not be an act of self-dealing if the compensation (or payment or reimbursement) is not excessive;

(F) any transaction between a private foundation and a corporation which is a disqualified person (as defined in section 4946(a)), pursuant to any liquidation, merger, redemption, recapitalization, or other corporate adjustment, organization, or reorganization, shall not be an act of self-dealing if all of the securities of the same class as that held by the foundation are subject to the same terms and such terms provide for receipt by the foundation of no less than fair market value; and

(G) in the case of a government official (as defined in section 4946(c)), paragraph (1) shall in addition not apply to—

(i) prizes and awards which are subject to the provisions of section 74(b), if the recipients of such prizes and awards are selected from the general public,

(ii) scholarships and fellowship grants which are subject to the provisions of section 117(a) and are to be

used for study at an educational organization described in section 170(b)(1)(A)(ii),

(iii) any annuity or other payment (forming part of a stock-bonus, pension, or profit-sharing plan) by a trust which is a qualified trust under section 401,

(iv) any annuity or other payment under a plan which meets the requirements of section 404(a)(2),

(v) any contribution or gift (other than a contribution or gift of money) to, or services or facilities made available to, any such individual, if the aggregate value of such contributions, gifts, services, and facilities to, or made available to, such individual during any calendar year does not exceed $25,

(vi) any payment made under chapter 41 of title 5, United States Code, or

(vii) any payment or reimbursement of traveling expenses for travel solely from one point in the United States to another point in the United States, but only if such payment or reimbursement does not exceed the actual cost of the transportation involved plus as amount for all other traveling expenses not in excess of 125 percent of the maximum amount payable under section 5702(a) of title 5, United States Code, for like travel by employees of the United States.

(e) OTHER DEFINITIONS.—For purposes of this section—

(1) TAXABLE PERIOD.—The term "taxable period" means, with respect to any act of self-dealing, the period beginning with the date on which the act of self-dealing occurs and ending on whichever of the following is the earlier: (A) the date of mailing of a notice of deficiency with respect to the tax imposed by subsection (a)(1) under section 6212, or (B) the date on which correction of the act of self-dealing is completed.

(2) AMOUNT INVOLVED.—The term "amount involved" means, with respect to any act of self-dealing, the greater of the amount of money and the fair market value of the other property given or the amount of money and the fair market value of the other property received; except that, in the case of services described in subsection (d)(2)(E), the amount involved shall be only the excess compensation. For purposes of the preceding sentence, the fair market value—

(A) in the case of the taxes imposed by subsection (a), shall be determined as of the date on which the act of self-dealing occurs; and

(B) in the case of the taxes imposed by subsection (b), shall be the highest fair market value during the correction period.

(3) CORRECTION.—The terms "correction" and "correct" mean, with respect to any act of self-dealing, undoing the transaction to the extent possible, but in any case placing the private foundation in a financial position not worse than that in which it would be if the disqualified person were dealing under the highest fiduciary standards.

(4) CORRECTION PERIOD.—The term "correction period" means, with respect to any act of self-dealing, the period begin-

ning with the date on which the act of self-dealing occurs and ending 90 days after the date of mailing of a notice of deficiency with respect to the tax imposed by subsection (b)(1) under section 6212, extended by—

(A) any period in which a deficiency cannot be assessed under section 6213(a), and

(B) any other period which the Secretary determines is reasonable and necessary to bring about correction of the act of self-dealing.

(Added Pub. L. 91-172, Title I, § 101(b), Dec. 30, 1969, 83 Stat. 499, and amended Pub. L. 94-455, Title XIX, §§ 1901(b)(8)(H), 1906(b)(13)(A), Oct. 4, 1976, 90 Stat. 1795, 1834.)

§ 4946. Definitions and special rules

(a) DISQUALIFIED PERSON.—

(1) IN GENERAL.—For purposes of this chapter, the term "disqualified person" means, with respect to a private foundation, a person who is—

(A) a substantial contributor to the foundation,

(B) a foundation manager (within the meaning of subsection (b)(1)),

(C) an owner of more than 20 percent of—

(i) the total combined voting power of a corporation,

(ii) the profits interest of a partnership, or

(iii) the beneficial interest of a trust or unincorporated enterprise,

which is a substantial contributor to the foundation,

(D) a member of the family (as defined in subsection (d)) of any individual described in subparagraph (A), (B), or (C),

(E) a corporation of which persons described in subparagraph (A), (B), (C), or (D) own more than 35 percent of the total combined voting power,

(F) a partnership in which persons described in subparagraph (A), (B), (C), or (D) own more than 35 percent of the profits interest,

(G) a trust or estate in which persons described in subparagraph (A), (B), (C), or (D) hold more than 35 percent of the beneficial interest,

(H) only for purposes of section 4943, a private foundation—

(i) which is effectively controlled (directly or indirectly) by the same person or persons who control the private foundation in question, or

(ii) substantially all of the contributions to which were made (directly or indirectly) by the same person or persons described in subparagraph (A), (B), or (C), or members of their families (within the meaning of subsection (d)), who made (directly or indirectly) substantially all of the contributions to the private foundation in question, and

(I) only for purposes of section 4941, a government official (as defined in subsection (c)).

(2) SUBSTANTIAL CONTRIBUTIONS.—For purposes of paragraph (1), the term "substantial contributor" means a person who is described in section 507(d)(2).

(3) STOCKHOLDINGS.—For purposes of paragraphs (1)(C)(i) and (1)(E), there shall be taken into account indirect stockholdings which would be taken into account under section 267(c), except that, for purposes of this paragraph, section 267(c)(4) shall be treated as providing that the members of the family of an individual are the members within the meaning of subsection (d).

(4) PARTNERSHIPS; TRUSTS.—For purposes of paragraphs (1)(C)(ii) and (iii), (1)(F), and (1)(G), the ownership of profits or beneficial interests shall be determined in accordance with the rules for constructive ownership of stock provided in section 267(c) (other than paragraph (3) thereof), except that section 267(c)(4) shall be treated as providing that the members of the family of an individual are the members within the meaning of subsection (d).

(b) FOUNDATION MANAGER.—For purposes of this chapter, the term "foundation manager" means, with respect to any private foundation—

(1) an officer, director, or trustee of a foundation (or an individual having powers or responsibilities similar to those of officers, directors, or trustees of the foundation), and

(2) with respect to any act (or failure to act), the employees of the foundation having authority or responsibility with respect to such act (or failure to act).

(c) GOVERNMENT OFFICIAL.—For purposes of subsection (a)(1)(I) and section 4941, the term "government official" means, with respect to an act of self-dealing described in section 4941, an individual who, at the time of such act, holds any of the following offices or positions (other than as a "special Government employee," as defined in section 202(a) of title 18, United States Code):

(1) an elective public office in the executive or legislative branch of the Government of the United States,

(2) an office in the executive or judicial branch of the Government of the United States, appointment to which was made by the President,

(3) a position in the executive, legislative, or judicial branch of the Government of the United States—

(A) which is listed in schedule C of rule VI of the Civil Service Rule, or

(B) the compensation for which is equal to or greater than the lowest rate of compensation prescribed for GS–16 of the General Schedule under section 5332 of title 5, United States Code,

(4) a position under the House of Representatives or the Senate of the United States held by an individual receiving gross compensation at an annual rate of $15,000 or more,

(5) an elective or appointive public office in the executive, legislative, or judicial branch of the government of a State, possession of the United States, or political subdivision or other area of any of the foregoing, or of the District of Columbia, held by an individual receiving gross compensation at an annual rate of $15,000 or more, or

(6) a position as personal or executive assistant or secretary to any of the foregoing.

(d) MEMBERS OF FAMILY.—For purposes of subsection (a)(1), the family of any individual shall include only his spouse, ancestors, lineal descendants, and spouses of lineal descendants.

(Added Pub. L. 91-172, Title I, § 101(b), Dec. 30, 1969, 83 Stat. 515.)

41. 31 U.S.C. sec. 1301

§ 1301. Application

(a) Appropriations shall be applied only to the objects for which the appropriations were made except as otherwise provided by law.

(R.S. § 3678.)

42. 31 U.S.C. secs. 3729, 3730

§ 3729. False claims

A person not a member of an armed force of the United States is liable to the United States Government for a civil penalty of $2,000, an amount equal to 2 times the amount of damages the Government sustains because of the act of that person, and costs of the civil action, if the person—

(1) knowingly presents, or causes to be presented, to an officer or employee of the Government or a member of an armed force a false or fraudulent claim for payment or approval;

(2) knowingly makes, uses, or causes to be made or used, a false record or statement to get a false or fraudulent claim paid or approved;

(3) conspires to defraud the Government by getting a false or fraudulent claim allowed or paid;

(4) has possession, custody, or control of public property or money used, or to be used, in an armed force and, intending to defraud the Government or willfully to conceal the property, delivers, or causes to be delivered, less property than the amount for which the person receives a certificate or receipt;

(5) authorized to make or deliver a document certifying receipt of property used, or to be used, in an armed force and, intending to defraud the Government, makes or delivers the receipt without completely knowing that the information on the receipt is true; or

(6) knowingly buys, or receives as a pledge of an obligation or debt, public property from a member of an armed force who lawfully may not sell or pledge the property.

(Pub. L. 97-258, Sept. 13, 1982, 96 Stat. 978.)

§ 3730. Civil actions for false claims

(a) The Attorney General diligently shall investigate a violation under section 3729 of this title. If the Attorney General finds that a person has violated or is violating section 3729, the Attorney General may bring a civil action under this section against the person. The person may be arrested and bail set for an amount of not more than $2,000 and 2 times the amount of damages sworn to in an affidavit of the Attorney General.

(b)(1) A person may bring a civil action for a violation of section 3729 of this title for the person and for the United States Government. The action shall be brought in the name of the Government. The district courts of the United States have jurisdiction of the action. Trial is in the judicial district within whose jurisdictional limits the person charged with a violation is found or the violation occurs. An action may be dismissed only if the court and the Attorney General give written consent and their reasons for consenting.

(2) A copy of the complaint and written disclosure of substantially all material evidence and information the person possesses shall be served on the Government under rule 4 of the Federal Rules of Civil Procedure (28 App. U.S.C.). The Government may proceed with the action by entering an appearance by the 60th day after being notified. The person bringing the action may proceed with the action if the Government—

(A) by the end of the 60-day period does not enter, or gives written notice to the court of intent not to enter, the action; or

(B) does not proceed with the action with reasonable diligence within 6 months after entering an appearance, or within additional time the court allows after notice.

(3) If the Government proceeds with the action, the action is conducted only by the Government. The Government is not bound by an act of the person bringing the action.

(4) Unless the Government proceeds with the action, the court shall dismiss an action brought by the person on discovering the action is based on evidence or information the Government had when the action was brought.

(c)(1) If the Government proceeds with the action, the person bringing the action may receive an amount the court decides is reasonable for disclosing evidence or information the Government did not have when the action was brought. The amount may not be more than 10 percent of the proceeds of the action or settlement of a claim and shall be paid out of those proceeds.

(2) If the Government does not proceed with an action, the person bringing the action or settling the claim may receive an amount the court decides is reasonable for collecting the civil penalty and damages. The amount may not be more than 25 percent of the proceeds of the action or settlement and shall be paid out of those proceeds. The person may also receive an amount for reasonable expenses the court finds to have been necessarily incurred and costs awarded against the defendant.

(d) The Government is not liable for expenses a person incurs in bringing an action under this section.

(Pub. L. 97-258, Sept. 13, 1982, 96 Stat. 978.)

43. 39 U.S.C. sec. 1002

§ 1002. Political recommendations

(a) Except as provided in subsection (e) of this section, each appointment, promotion, assignment, transfer, or designation, interim or otherwise, of an officer or employee in the Postal Service (except a Governor or member of the Postal Rate Commission) shall be made without regard to any recommendation or statement, oral or written, with respect to any person who requests or is under con-

sideration for such appointment, promotion, assignment, transfer, or designation, made by—

(1) any Member of the Senate or House of Representatives (including the Resident Commissioner from Puerto Rico);

(2) any elected official of the government of any State (including the Commonwealth of Puerto Rico) or of any county, city, or other political subdivision of such State or Commonwealth;

(3) any official of a national political party or of a political party of any State (including the Commonwealth of Puerto Rico), county, city, or other subdivision of such State or Commonwealth;

(4) any other individual or organization.

(b) Except as provided in subsection (e) of this section, a person or organization referred to in clause (1), (2), (3), or (4) of subsection (a) of this section is prohibited from making or transmitting to the Postal Service, or to any other officer or employee of the Government of the United States, any recommendation or statement, oral or written, with respect to any person who requests or is under consideration for any such appointment, promotion, assignment, transfer, or designation. The Postal Service and any officer or employee of the Government of the United States, subject to subsection (e) of this section—

(1) shall not solicit, request, consider, or accept any such recommendation or statement; and

(2) shall return any such written recommendation or statement received by him, appropriately marked as in violation of this section, to the person or organization making or transmitting the same.

(c) A person who requests or is under consideration for any such appointment, promotion, assignment, transfer, or designation is prohibited from requesting or soliciting any such recommendation or statement from any person or organization except a statement of the type referred to in subsection (e)(2) of this section.

(d) Each employment form of the Postal Service used in connection with any such appointment, promotion, assignment, transfer, or designation shall contain appropriate language in boldface type informing all persons concerned of the provisions of this section. During the time any such appointment, promotion, assignment, transfer, or designation is under consideration, appropriate notice of the provisions of this section printed in boldface type shall be posted in the post office concerned.

(e) The Postal Service or any authorized officer or employee of the Government of the United States may solicit, accept, and consider, and any other individual or organization may furnish or transmit to the Postal Service or such authorized officer or employee, any statement with respect to a person who requests or is under consideration for such appointment, promotion, assignment, transfer, or designation, if—

(1) the statement is furnished pursuant to a request or requirement of the Postal Service and consists solely of an evaluation of the work performance, ability, aptitude, and general qualifications of such person;

(2) the statement relates solely to the character and residence of such person;

(3) the statement is furnished pursuant to a request made by an authorized representative of the Government of the United States solely in order to determine whether such person meets the loyalty, suitability, and character requirements for employment with the Government of the United States; or;

(4) the statement is furnished by a former employer of such person pursuant to a request of the Postal Service, and consists solely of an evaluation of the work performance, ability, aptitude, and general qualifications of such person during his employment with such former employer.

(f) The Postal Service shall take any action it determines necessary and proper, including but not limited to suspension, removal from office, or disqualification from the Postal Service, to enforce the provisons of this section.

(g) The provisions of this section shall not affect the right of an officer or employee of the Postal Service to petition Congress as authorized by section 7102 of title 5.

(Pub. L. 91-375, Aug. 12, 1970, 84 Stat. 729.)

Effective Date: Section effective March 1, 1971, pursuant to Resolution No. 71-13 of the Board of Governors of the U.S. Postal Service. See section 15(c) of Pub. L. 91-375, set out as a note preceding section 101 of this title.

Legislative History: For legislative history and purpose of Pub. L. 91-375, see 1970 U.S. Code Cong. and Adm. News, p. 3649.

44. 39 U.S.C. sec. 3210

§ 3210. Franked mail transmitted by the Vice President, Members of Congress, and congressional officials

(a)(1) It is the policy of the Congress that the privilege of sending mail as franked mail shall be established under this section in order to assist and expedite the conduct of the official business, activities, and duties of the Congress of the United States.

(2) It is the intent of the Congress that such official business, activities, and duties cover all matters which directly or indirectly pertain to the legislative process or to any congressional representative functions generally, or to the functioning, working, or operating of the Congress and the performance of official duties in connection therewith, and shall include, but not be limited to, the conveying of information to the public, and the requesting of the views of the public, or the views and information of other authority of government, as a guide or a means of assistance in the performance of those functions.

(3) It is the intent of the Congress that mail matter which is frankable specifically includes, but is not limited to—

(A) mail matter to any person and to all agencies and officials of Federal, State, and local governments regarding programs, decisions, and other related matters of public concern or public service, including any matter relating to actions of a past or current Congress;

(B) the usual and customary congressional newsletter or press release which may deal with such matters as the impact of laws and decisions on State and local governments and individual citizens; reports on public and official actions taken by

Members of Congress; and discussions of proposed or pending legislation or governmental actions and the positions of the Members of Congress on, and arguments for or against, such matters;

(C) the usual and customary congressional questionnaire seeking public opinion on any law, pending or proposed legislation, public issue, or subject;

(D) mail matter dispatched by a Member of Congress between his Washington office and any congressional district offices, or between his district offices;

(E) mail matter directed by one Member of Congress to another Member of Congress or to representatives of the legislative bodies of State and local governments;

(F) mail matter expressing congratulations to a person who has achieved some public distinction;

(G) mail matter, including general mass mailings, which consists of Federal laws, Federal regulations, other Federal publications, publications purchased with Federal funds, or publications containing items of general information;

(H) mail matter which consists of voter registration or election information or assistance prepared and mailed in a nonpartisan manner;

(I) mail matter which constitutes or includes a biography or autobiography of any Member of, or Member-elect to, Congress or any biographical or autobiographical material concerning such Member or Member-elect or the spouse or other members of the family of such Member or Member-elect, and which is so mailed as a part of a Federal publication or in response to a specific request therefor and is not included for publicity purposes in a newsletter or other general mass mailing of the Member or Member-elect under the franking privilege; or

(J) mail matter which contains a picture, sketch, or other likeness of any Member or Member-elect and which is so mailed as a part of a Federal publication or in response to a specific request therefor and, when contained in a newsletter or other general mass mailing of any Member or Member-elect, is not of such size, or does not occur with such frequency in the mail matter concerned, as to lead to the conclusion that the purpose of such picture, sketch, or likeness is to advertise the Member or Member-elect rather than to illustrate accompanying text.

(4) It is the intent of the Congress that the franking privilege under this section shall not permit, and may not be used for, the transmission through the mails as franked mail, of matter which in its nature is purely personal to the sender or to any other person and is unrelated to the official business, activities, and duties of the public officials covered by subsection (b)(1) of this section.

(5) It is the intent of the Congress that a Member of or Member-elect to Congress may not mail as franked mail—

(A) mail matter which constitutes or includes any article, account, sketch, narration, or other text laudatory and complimentary of any Member of, or Member-elect to, Congress on a purely personal or political basis rather than on the basis of

performance of official duties as a Member or on the basis of activities as a Member-elect;

(B) mail matter which constitutes or includes—

(i) greetings from the spouse or other members of the family of such Member or Member-elect unless it is a brief reference in otherwise frankable mail;

(ii) reports of how or when such Member or Member-elect, or the spouse of any other member of the family of such Member or Member-elect, spends time other than in the performance of, or in connection with, the legislative, representative, and other official functions of such Member or the activities of such Member-elect as a Member-elect; or

(iii) any card expressing holiday greetings from such Member or Member-elect;

(C) mail matter which specifically solicits political support for the sender or any other person or any political party, or a vote or financial assistance for any candidate for any public office;

(6)(A) It is the intent of Congress that a Member of, or Member-elect to, Congress may not mail any mass mailing as franked mail—

(i) if the mass mailing is mailed fewer than 60 days immediately before the date of any primary election or general election (whether regular, special, or runoff) in which the Member is a candidate for reelection; or

(ii) in the case of a Member of, or Member-elect to, the House who is a candidate for any other public office, if the mass mailing—

(I) is prepared for delivery within any portion of the jurisdiction of or the area covered by the public office which is outside the area constituting the congressional district from which the Member or Member-elect was elected; or

(II) is mailed fewer than 60 days immediately before the date of any primary election or general election (whether regular, special, or runoff) in which the Member or Member-elect is a candidate for any other public office.

(B) Any mass mailing which is mailed by the chairman of any organization referred to in the last sentence of section 3215 of this title which relates to the normal and regular business of the organization may be mailed without regard to the provisions of this paragraph.

(C) No Member of the Senate may mail any mass mailing as franked mail if such mass mailing is mailed fewer than 60 days immediately before the date of any primary election or general election (whether regular, special, or runoff) for any national, State or local office in which such Member is a candidate for election.

(D) The Select Committee on Ethics of the Senate and the House Commission on Congressional Mailing Standards shall prescribe for their respective Houses rules and regulations, and shall take other action as the Committee or the Commission considers necessary and proper for Members and Members-elect to comply with the provisions of this paragraph and applicable rules and regulations. The rules and regulations shall include provisions prescribing the

time within which mailings shall be mailed at or delivered to any postal facility and the time when the mailings shall be deemed to have been mailed or delivered to comply with the provisions of this paragraph.

(E) For purposes of this section, the term "mass mailing" means newsletters and similar mailings of more than five hundred pieces in which the content of the matter mailed is substantially identical but shall not apply to mailings—

(i) which are in direct response to communications from persons to whom the matter is mailed;

(ii) to colleagues in the Congress or to government officials (whether Federal, State, or local); or

(iii) of news releases to the communications media.

(b)(1) The Vice President, each Member of or Member-elect to Congress, the Secretary of the Senate, the Sergeant at Arms of the Senate, each of the elected officers of the House of Representatives (other than a Member of the House), and the Legislative Counsels of the House of Representatives and the Senate, may send, as franked mail, matter relating to their official business, activities, and duties, as intended by Congress to be mailable as franked mail under subsection (a) (2) and (3) of this section.

(2) If a vacancy occurs in the Office of the Secretary of the Senate, the Sergeant at Arms of the Senate, an elected officer of the House of Representatives (other than a Member of the House), or the Legislative Counsel of the House of Representatives or the Senate, any authorized person may exercise the franking privilege in the officers' name during the period of the vacancy.

(3) The Vice President, each Member of Congress, the Secretary of the Senate, the Sergeant at Arms of the Senate, and each of the elected officers of the House (other than a Member of the House), during the 90-day period immediately following the date on which they leave office, may send, as franked mail, matter on official business relating to the closing of their respective offices. The House Commission on Congressional Mailing Standards and the Select Committee on Standards and Conduct of the Senate shall prescribe for their respective Houses such rules and regulations, and shall take such other action as the Commission or Committee considers necessary and proper, to carry out the provisions of this paragraph.

(c) Franked mail may be in any form appropriate for mail matter, including, but not limited to, correspondence, newsletters, questionnaires, recordings, facsimiles, reprints, and reproductions. Franked mail shall not include matter which is intended by Congress to be nonmailable as franked mail under subsection (a) (4) and (5) of this section.

(d)(1) A Member of Congress may mail franked mail with a simplified form of address for delivery—

(A) within that area constituting the congressional district or State from which he was elected; and

(B) with respect to a Member of the House of Representatives on and after the date on which the proposed redistricting of congressional districts in his State by legislative or judicial proceedings is initially completed (whether or not the redistricting is actually in effect), within any additional area of

each congressional district proposed or established in such redistricting and containing all or part of the area constituting the congressional district from which he was elected, unless and until the congressional district so proposed or established is changed by legislative or judicial proceedings.

(2) A Member-elect to the Congress may mail franked mail with a simplified form of address for delivery within that area constituting the congressional district or the State from which he was elected.

(3) A Delegate, Delegate-elect, Resident Commissioner, or Resident Commissioner-elect to the House of Representatives may mail franked mail with a simplified form of address for delivery within the area from which he was elected.

(4) Any franked mail which is mailed under this subsection shall be mailed at the equivalent rate of postage which assures that the mail will be sent by the most economical means practicable.

(5) The Senate Committee on Rules and Administration and the House Commission on Congressional Mailing Standards shall prescribe for their respective Houses rules and regulations governing any franked mail which is mailed under this subsection and shall by regulation limit the number of such mailings allowed under this subsection.

(6)(A) Any Member of, or Member-elect to, the House of Representatives entitled to make any mailing as franked mail under this subsection shall, before making any mailing, submit a sample or description of the mail matter involved to the House Commission on Congressional Mailing Standards for an advisory opinion as to whether the proposed mailing is in compliance with the provisions of this subsection.

(B) The Senate Select Committee on Ethics may require any Member of, or Member-elect to, the Senate entitled to make any mailings as franked mail under this subsection to submit a sample or description of the mail matter to the Committee for an advisory opinion as to whether the proposed mailing is in compliance with the provisions of this subsection.

(7) Franked mail mailed with a simplied form of address under this subsection—

(A) shall be prepared as directed by the Postal Service; and

(B) May be delivered to—

(i) each box holder or family on a rural or star route;

(ii) each post office box holder; and

(iii) each stop or box on a city carrier route.

(8) For purposes of this subsection, a congressional district includes in the case of a Representative at Large or Representative at Large-elect, the State from which he was elected.

(e) The frankability of mail matter shall be determined under the provisions of this section by the type and content of the mail sent, or to be sent.

(f) Any mass mailing which otherwise would be permitted to be mailed as franked mail under this section shall not be so mailed unless the cost of preparing and printing the mail matter is paid exclusively from funds appropriated by Congress, except that an otherwise frankable mass mailing may contain, as an enclosure or supplement, any public service material which is purely instruc-

tional or informational in nature, and which in content is frankable under this section.

(g) Notwithstanding any other provision of Federal, State, or local law, or any regulation thereunder, the equivalent amount of postage determined under section 3216 of this title on franked mail under the frank of the Vice President or a Member of Congress, and the cost of preparing or printing such frankable matter for such mailing under the frank, shall not be considered as a contribution to, or an expenditure by, the Vice President or a Member of Congress for the purpose of determining any limitation on expenditures or contributions with respect to any such official, imposed by any Federal, State, or local law or regulation, in connection with any campaign of such official for election to any Federal office.

45. 41 U.S.C. sec. 22

§ 22. Interest of Member of Congress

In every contract or agreement to be made or entered into, or accepted by or on behalf of the United States, there shall be inserted an express condition that no Member of Congress shall be admitted to any share or part of such contract or agreement, or to any benefit to arise thereupon. Nor shall the provisions of this section apply to any contracts or agreements heretofore or hereafter entered into under the Agricultural Adjustment Act, the Federal Farm Loan Act, the Emergency Farm Mortgage Act of 1933, the Federal Farm Mortgage Act, the Farm Credit Act of 1933, and the Home Owners' Loan Act of 1933, and shall not apply to contracts or agreements of a kind which the Secretary of Agriculture may enter into with farmers: *Provided,* That such exemption shall be made a matter of public record. R.S. § 3741; Feb. 27, 1877, c. 69 § 1, 19 Stat. 249; Jan. 25, 1934, c. 5, 48 Stat, 337; June 27, 1934, c. 847, Title V, § 510, 48 Stat. 1264; Aug. 26, 1937, c. 821, 50 Stat. 838.

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